

DRAFTING SUBSIDIARY LEGISLATION IN NIGERIA: A CASE STUDY OF THE
CENTRAL BANK OF NIGERIA

BY

Mariam Ajoke SHITTU (MRS)
PG/NILS2110019

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DECLARATION

I hereby declare that this work is the product of my own research efforts undertaken under the supervision of Dr. Ibrahim Usman, and has not been presented elsewhere for the award of a degree or certificate. All sources have been duly distinguished and appropriately acknowledged.

.....
Mariam Ajoke SHITTU (MRS.)
PG/NILS2110019

CERTIFICATION

This Dissertation titled: " DRAFTING SUBSIDIARY LEGISLATION IN NIGERIA: A CASE STUDY OF THE CENTRAL BANK OF NIGERIA " and written by Mariam Ajoke Shittu (MRS.) has been read and approved as meeting the requirements for the award of the degree of Master of Laws of the University of Benin, Nigeria.

..... (Supervisor) Signature Date
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..... (Internal Examiner) Signature Date
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..... (Director, Post Graduate Studies) Signature Date
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..... (External Examiner) Signature Date
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DEDICATION

In humble acknowledgement of the boundless and unwavering guidance bestowed upon me, I dedicate this dissertation to the Almighty God. His infinite wisdom has illuminated my academic journey, and I offer this work as an expression of gratitude for His constant presence and blessing.

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LIST OF ABBREVIATIONS AND ACRONYMS

AMI/CFT.....	Anti-Money Laundering And Combating Financing Of Terrorism (Aml/Cft)
ANPP.....	All Nigeria Peoples Party
BOFIA.....	Banks and Other Financial Institutions Act
CBN.....	Central Bank of Nigeria
CDD.....	Customer Due Diligence
Ed.....	Edition
EFCC.....	Economic and Financial Crimes Commission
INEC.....	Independent National Electoral Commission
MCTFEPG.....	Monetary, Credit, Foreign Trade and Exchange Policy Guidelines
MSMEs.....	Micro, Small And Medium Enterprises
PEPs.....	Politically Exposed Persons
SAR.....	Suspicious Activity Reporting

ABSTRACT

The Central Bank of Nigeria (CBN) played a pivotal role in the country's financial regulatory landscape through its subsidiary legislation. This dissertation scrutinized the drafting practices of the CBN's subsidiary legislation to assess their adherence to principles of clarity, conciseness, and plain language, aiming to enhance accessibility and understanding for stakeholders.

Utilizing a doctrinal research methodology, this study analyzed legal texts, statutes, and case law to explore the legal framework. Shortcomings in clarity, consistency, and the prevalence of technical terminology and legal jargon were evident, posing challenges for comprehension among non-legal professionals. Additionally, inconsistencies in structure and ambiguities within or between legislation exacerbated compliance issues.

Proposed measures to address these challenges encompassed adopting a plain language drafting style, developing a drafting manual, offering training on plain language principles, and conducting systematic reviews.

This Dissertation aimed to enhance the transparency, coherence, and effectiveness of the CBN's subsidiary legislation, ultimately fostering improved regulatory compliance and understanding among stakeholders.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The Central Bank of Nigeria (CBN) plays a crucial role in shaping the nation's monetary and financial environment. To execute its diverse mandates, the CBN utilizes a range of legislative instruments, including primary legislation enacted by the National Assembly and subsidiary legislation issued by the Bank itself.¹ This general introduction delves into the intricacies of CBN's subsidiary legislation, exploring its characteristics, types, functions, and challenges.²

Subsidiary Legislation, unlike primary legislation, is not directly enacted by the Legislature. Instead, the CBN derives its authority to issue such instruments from specific provisions within the Central Bank of Nigeria Act 2007 (CBN Act), Banks and other Financial Institutions Act (BOFIA) and other relevant statutes. Subsidiary legislation takes various forms, including guidelines, circulars, directives, notices, regulations, and frameworks. Each form carries different levels of legal force and applicability.³

CBN's subsidiary legislation is frequently amended or revised to adapt to evolving economic and regulatory landscapes. This dynamism necessitates constant monitoring and awareness by financial institutions and market participants. Some of these instruments include the following⁴

¹ EC Osuala, 'The legal framework for monetary policy in Nigeria'. *Journal of African Law* [2007] 51(3-4), 462-482.

² OA Akintola, 'Subsidiary legislation and regulatory power in Nigeria: A study of the Central Bank of Nigeria'. *International Journal of Law and Public Policy* [2018] 4(2), 38-48.

³ CC Anyaoku, 'The Central Bank of Nigeria and the development of banking and finance in Nigeria'. *African Journal of Law and Economics* [2010] 5(2), 367-382.

⁴ O Ayodele, 'The Central Bank of Nigeria and its regulatory powers: A critical analysis'. *African Journal of Legal Studies* [2012] 6(2), 169-182.

Monetary Policy Instruments: These instruments regulate the money supply, interest rates, and credit availability in the economy. Examples include Monetary Policy Guidelines, Liquidity Management Guidelines, and Cash Reserve Requirements.⁵

Prudential Regulations: These regulations set minimum capital requirements, risk management standards, and corporate governance best practices for financial institutions under the CBN's supervision. Examples include Basel III Implementation Guidelines, Corporate Governance Code for Banks and Discount Houses, and Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Regulations.

Sector-Specific Guidelines: These guidelines target specific sectors or segments of the financial system, promoting their orderly development and addressing unique challenges. Examples include Microfinance Regulation and Supervisory Guidelines, Mobile Money Guidelines, and Insurance Industry Guidelines.

Operational Procedures: These instruments outline internal procedures and processes within the CBN itself, including currency management, payments systems, and financial market infrastructure.

The subsidiary legislation translates broad principles enshrined in primary legislation into specific, actionable rules and procedures. They fill in gaps and provide details. Where primary legislation leaves room for interpretation, subsidiary legislation clarifies ambiguities and provides necessary details for effective implementation. The subsidiary instrument also respond to emerging issues. The CBN can swiftly address new challenges and opportunities through flexible and adaptable subsidiary legislation. The CBN, in collaboration with other

⁵ SO Onyekachi, 'The Central Bank of Nigeria and the regulation of the insurance industry in Nigeria'. *International Journal of Business and Management* [2013] 8(11), 48-55.

regulators, may issue joint guidelines or frameworks to ensure consistency and coherence across the financial system.⁶

CBN's subsidiary legislation plays a vital role in regulating and shaping the Nigerian financial system. Understanding its characteristics, types, functions, and challenges is critical for all stakeholders – from policymakers and regulators to financial institutions and market participants.⁷ By addressing existing challenges and continuously streamlining its drafting and implementation processes, the CBN can ensure its subsidiary legislation remains effective, transparent, and conducive to a stable and dynamic financial environment for Nigeria.⁸

1.2 Problem Statement

In the landscape of Nigeria's financial regulatory framework, the subsidiary legislation crafted by the Central Bank of Nigeria (CBN) serves as the backbone of its regulatory regime. The effectiveness of the CBN's regulatory regime hinges on the quality and coherence of its subsidiary legislation. However, concerns regarding inconsistencies, ambiguities, and procedural irregularities in drafting practice cast doubt on the transparency, accountability and the effectiveness of the CBN's legislative framework.

These deficiencies not only hinder the understanding and compliance of relevant stakeholders but also undermine the overarching objectives of regulatory clarity and coherence. Delving deeper into these challenges, my thesis seeks to unearth the systemic barriers impeding the CBN's drafting practices, ultimately aiming to show real-world implications and avenues for improvement in Nigeria's financial regulatory landscape.

⁶ Central Bank of Nigeria, *Guidelines for the implementation of the Basel III capital adequacy framework in Nigeria* (2012)

⁷ OI Ezenwa, 'The challenges of legal framework for the regulation of mobile money in Nigeria'. *Journal of African Law and International Affairs* [2019] 6(2), 132-148.

⁸ OC Egun, 'The role of the Central Bank of Nigeria in the implementation of anti-money laundering laws in Nigeria'. *African Journal of Criminology and Social Justice* [2017] 4(1), 45-58.

1.3 Key Study Questions

In line with this problem statement, the following research questions are developed.

- i. To what extent do the CBN's subsidiary legislations adhere to principles of clarity, conciseness, and plain language, ensuring accessibility and understanding for stakeholders?
- ii. How does the use of technical terminology and legal jargon in CBN's subsidiary legislation affect its comprehensibility for non-legal professionals?
- iii. Is there consistency in the drafting style and structure across different types of CBN's subsidiary legislation, promoting coherence and ease of reference?
- iv. Do ambiguities and inconsistencies within or between different pieces of CBN's subsidiary legislation create challenges for compliance by regulated entities?

1.4 Aim and Objectives

Generally, the aim of this research is to delve into the intricacies of legislative drafting, this study takes the CBN as its case study, shedding light on the processes, challenges, and potential improvements in crafting effective regulatory instruments. Specifically other objectives are:

- i. To study the CBN subsidiary legislation to ascertain their adherence to the principles of clarity, conciseness, and plain language, ensuring accessibility and understanding for stakeholders.
- ii. To ascertain the effect of the use of technical terminology and legal jargon in CBN's subsidiary legislation to non-legal professionals.
- iii. To identify inconsistency in the drafting style and structure across different types of CBN's subsidiary legislation.

- iv. To identify ambiguities and inconsistencies within or between different pieces of CBN's subsidiary legislation that creates challenges for compliance by regulated entities.

1.5 Significance of The Study

By examining the CBN's legislative practices through the lens of drafting principles, this thesis aims to contribute to:

- i. Transparency and predictability in the regulatory environment.
- ii. Efficient and effective implementation of CBN's monetary and financial policies.
- iii. Ensuring fair and equitable treatment of market participants.
- iv. Enhancing public confidence in the CBN's regulatory function.
- v. Improved quality and effectiveness of CBN's regulations.
- vi. Strengthened trust and confidence in the Nigerian financial system.
- vii. Enhanced legal and regulatory framework for economic stability and growth.

This study will serve as a valuable resource for students, lecturers, and fellow researchers in the field of legislative drafting. It offers an in-depth analysis of both historical and contemporary literature related to the practice of subsidiary legislation. Additionally, government officials and policymakers will find substantial benefits in this work, as it will provide recommendations regarding the methodology required for an effective practice.

1.6 Scope of Study

This study focuses on the drafting of subsidiary legislation by the Central Bank of Nigeria (CBN) but may also include historical context where relevant. The study encompasses various forms of subsidiary legislation used by the CBN, including guidelines, circulars, directives, notices, regulations, and frameworks.

This study will not delve into the substantive policy content of specific CBN regulations, focusing primarily on the drafting process and techniques. Detailed analysis of legislative procedures within the Nigerian National Assembly is outside the scope of this study. The research will not comprehensively explore all forms of subsidiary legislation utilized across other Nigerian government agencies or sectors.

1.7 Research Methodology

To effectively analyse the drafting practices of the subsidiary legislation of the Central Bank of Nigeria (CBN), this dissertation adopts the doctrinal research methodology. Doctrinal research primarily involves the analysis of legal texts, statutes, caselaw and other authoritative sources. Given that the study pertains to legal documents and regulatory framework, a doctrinal approach allows for in-depth analysis of the legal principles, rules and precedents that govern subsidiary legislation drafting. It facilitates an examination of the legal validity, coherence, and effectiveness of the regulatory framework.

Legal analysis, statutory analysis, scrutiny the CBN Act 2007 and other relevant statutes are explored to understand the legal framework, delegation of powers, and procedural requirements for the CBN's subsidiary legislation drafting.

Case law analysis: Review relevant judicial pronouncements that have interpreted or challenged the CBN's legislative authority and drafting practices, if any, shall be carried out.

The study shall collect and analyse a representative sample of CBN's subsidiary legislation: Include various types of instruments (guidelines, circulars, regulations) covering different areas of the Bank's operations. Evaluate the drafting characteristics which include clarity, conciseness, and consistency, use of technical language, structure, and organization of the instruments.

CHAPTER TWO

CONCEPTUAL CLARIFICATIONS, HISTORICAL BACKGROUND AND LITERATURE REVIEW

This chapter clarified the concept, the historical background and relevant literature pertaining to the drafting of the CBN subsidiary legislation. By examining these key components, this chapter aimed to provide a thorough understanding of the subject matter laying the groundwork for subsequent analysis.

2.1 Subsidiary Legislation

Subsidiary legislation, also known as secondary or delegated legislation, refers to laws created by bodies other than the main legislature, but still deriving their legal authority from the primary legislation enacted by the main legislature.⁹ It's not a single law but a collection of laws that are subordinate to primary legislation.¹⁰

These bodies (e.g., government departments, ministers, central banks, local authorities) receive the power to create subsidiary legislation from the primary legislation itself. The legal force of subsidiary legislation comes from the enabling powers granted by the primary legislation it supports. It can take various forms, including regulations, orders, rules, by-laws, and schemes.¹¹ These laws can cover a wide range of topics, from technical details of implementing primary legislation to broader policy matters within the scope of the enabling Act.¹²

2.1.1 Characteristics of Subsidiary Legislation

Flexibility and speed: Subsidiary legislation allows for quicker adaptation to changing circumstances and specific needs compared to primary legislation, which often requires a more

⁹ William Blackstone, *Dictionary of Law* (10th ed. Oxford University Press 2014).

¹⁰ Craies *Statute Law* (13th ed. Sweet & Maxwell 2023)

¹¹ HWR Wade & CH Forsyth, *Administrative Law* (12th ed. Oxford University Press 2014)

¹² J Bell, *Legislative Drafting* (3rd ed. LexisNexis 2010).

complex legislative process. Technical details: It often deals with the technical details of implementing or supplementing primary legislation, providing more specific guidance and clarity. Scope limited by primary legislation: The scope and content of subsidiary legislation are always constrained by the powers delegated in the primary legislation it supports. Accountability and scrutiny: While created by delegated bodies, subsidiary legislation is subject to judicial review and parliamentary scrutiny to ensure its legality and compliance with the primary legislation and broader legal principles.¹³

2.1.2 Importance of Subsidiary Legislation

Essential for efficient law-making: It allows for a more detailed and responsive legal framework, addressing specific issues within the broad scope of primary legislation. Reduces legislative burden: Enables the main legislature to focus on major policy issues while delegating technical details and implementation to specialized bodies. Promotes adaptability: Allows for quicker adjustments to changing circumstances and emerging issues compared to amending primary legislation.¹⁴

2.2 Legislative Drafting

Legislative drafting is an art and science of transforming legislative intent into clear, concise, and legally sound written instruments that can be effectively implemented and interpreted by courts, government officials, and the public.¹⁵ It is a specialized skill of translating policy objectives into legally binding and enforceable language, considering both the intended purpose and the potential impact on diverse stakeholders.¹⁶ The process of writing laws that

¹³ CM Elliott, *Legislative Drafting* (6th ed. Oxford University Press 2018)

¹⁴ JK Agbamuwe, *Principles of Legislative Drafting and Interpretation in Nigeria* (University Press 2014).

¹⁵ OC Egwun, 'The role of the Central Bank of Nigeria in the implementation of anti-money laundering laws in Nigeria,' *African Journal of Criminology and Social Justice* [2017] 4(1), 45-58

¹⁶ J Bell, *Legislative Drafting* (3rd ed. LexisNexis 2010)

are clear, unambiguous, and easy to understand for both legal professionals and the general public, ensuring their effective implementation and compliance.¹⁷

According to Ogunleye¹⁸, Legislative drafting is the systematic translation of policy decisions into specific legal provisions, considering the practicalities of implementation, enforcement, and potential challenges in application. The craft of crafting laws – the nuts and bolts, the grammar and syntax of legislation – making sure the words on paper translate into real-world action and impact.¹⁹ It is also an art of building the legal framework, brick by legislative brick, ensuring each provision is clear, consistent, and serves its intended purpose without unintended consequences. These different definitions, provide a comprehensive perspective on the multifaceted nature of legislative drafting and its crucial role in shaping the legal landscape of subsidiary legislation in Nigeria.

2.2.1 Nature of legislative drafting

The nature of legislative drafting is multifaceted, demanding both technical expertise and a deep understanding of legal principles, policy objectives, and societal context. It is a challenging but crucial process that shapes the legal framework and plays a vital role in shaping society. Legislative drafting is a complex and multifaceted process that sits at the intersection of law, policy, and language. Understanding its nature requires examining its key characteristics, challenges, and goals.²⁰

2.2.2 Characteristics of legislative drafting²¹

Some of the characteristics of legislative drafting includes:

¹⁷ The World Bank, *Good Practices in Legislative Drafting* (2017)

¹⁸ O Ogunleye, *Legislative Drafting in Nigeria: A Practical Approach* (2013)

¹⁹ United Nations Office of Legal Affairs, *Legislative Drafting Manual* (2015)

²⁰ CM Elliott, *Legislative Drafting* (6th ed. Oxford University Press 2018)

²¹ Wade, H. W. R., & Forsyth, C. H. (2014). *Administrative Law* (12th ed.). Oxford University Press

- (a) Transformative: Legislative drafting transforms policy objectives into legally binding instruments, shaping the legal landscape and influencing society.
- (b) Technical: It requires mastery of legal principles, drafting techniques, and language precision to produce clear, concise, and unambiguous laws.
- (c) Collaborative: While often viewed as a solitary exercise, effective drafting often involves collaboration with policymakers, legal experts, and stakeholders to ensure the legislation is comprehensive and reflects diverse perspectives.
- (d) Contextual: Drafters must consider the legal framework, societal context, and potential future interpretations when crafting laws.
- (e) Future-oriented: Laws drafted today can have long-lasting consequences, requiring drafters to anticipate future challenges and potential unintended consequences.

2.2.3 Goals of legislative drafting²²

Some of the goals of legislative drafting are:

- (a) Clarity and accessibility: Laws should be written in a way that is understandable to both legal professionals and the general public.
- (b) Effectiveness and enforceability: Laws should be crafted to achieve their intended purpose and be effectively implemented and enforced.
- (c) Consistency and coherence: Legislation should be consistent with existing legal principles and avoid internal contradictions or inconsistencies.
- (d) Accountability and transparency: Laws should be drafted in a way that promotes accountability and transparency in their implementation and application.
- (e) Future-proof and adaptable: Laws should be drafted with the potential for future changes in mind, allowing for adaptation without compromising their core objectives.

²² International Law Commission, *Legislative Guide to Drafting: General Introduction and Conclusions* (2017)

2.2.4 Challenges of legislative drafting.²³

Some of the challenges of legislative drafting include:

- (a) Balancing clarity and conciseness: Laws must be clear for all to understand, but also concise to avoid ambiguity and unnecessary complexity.
- (b) Anticipating diverse interpretations: Laws can be interpreted in different ways, and drafters must strive to minimize room for misinterpretation and ensure the intended meaning is clear.
- (c) Addressing technical complexities: Some laws involve technical matters requiring specialized knowledge and careful drafting to ensure accuracy and effectiveness.
- (d) Balancing competing interests: Legislation often involves balancing the interests of different stakeholders, and drafters must navigate these competing demands while crafting a fair and effective law.
- (e) Keeping up with evolving circumstances: The legal and social landscape constantly evolves, requiring drafters to be adaptable and ensure their work remains relevant and effective over time.

2.3 Technical Terms

In the realm of legislative drafting, a nuanced understanding of technical terminology is paramount for effective communication and analysis. As we delve into the intricate landscape of drafting subsidiary legislation, particularly focusing on the practices of the Central Bank of Nigeria, it becomes imperative to be familiarized with a plethora of technical terms that underpin this domain. From concepts such as subsidiary legislation and regulatory framework to procedural irregularities and stakeholder consultation, these technical terms serve as the cornerstone of our discourse, shedding light on the complexities

²³ The World Bank, *Good Practices in Legislative Drafting* (2017)

and nuances inherent in legislative drafting. Through an exploration of these terms, we aim to unravel the intricacies of the drafting process, dissecting its nuances and implications for the regulatory landscape.

2.3.1 Inconsistencies: Inconsistencies in legislative drafting refer to discrepancies, contradictions, or conflicts within the text of laws, regulations, or subsidiary legislation. These inconsistencies can arise due to various factors, including ambiguous language, contradictory provisions, drafting errors, or conflicting legislative intent. Understanding and addressing inconsistencies are crucial for ensuring the clarity, coherence, and effectiveness of the legislative framework. Below are the elaboration on the key aspects of inconsistencies in legislative drafting:

- i. Ambiguous Language: One common cause of inconsistencies is the use of ambiguous or vague language in legislative texts. Ambiguity arises when a provision can be reasonably interpreted in more than one way, leading to uncertainty and potential disputes over its meaning or application.
- ii. Contradictory Provisions: Inconsistencies may occur when different provisions within the same statute or between different statutes conflict with each other. For example, one provision may grant a right or impose an obligation, while another provision directly contradicts or undermines it.
- iii. Drafting Errors: Errors in drafting, such as typographical errors, grammatical mistakes, or inadvertent omissions, can result in inconsistencies that affect the interpretation and application of the law. These errors may stem from human error during the drafting process or inadequate proofreading and review procedures.

- v. **Conflicting Legislative Intent:** Inconsistencies may arise when the legislative intent behind a provision is unclear or when different provisions reflect conflicting policy objectives. This can occur when lawmakers enact legislation without fully considering its implications or when amendments to existing laws inadvertently create inconsistencies with other provisions.
- vi. Inconsistencies may also arise in the scope and application of legislative provisions, particularly when laws are drafted broadly or narrowly defined. Confusion may arise over the intended coverage of a provision, leading to inconsistent interpretation and application by regulatory authorities, courts, and stakeholders.
- vii. **Legal Uncertainty:** Inconsistencies in legislative drafting contribute to legal uncertainty, making it difficult for individuals, businesses, and government agencies to understand their rights, obligations, and legal liabilities. This uncertainty can lead to compliance challenges, litigation risks, and inefficiencies in the administration of justice.

Addressing inconsistencies in legislative drafting requires careful review, revision, and refinement of legislative texts to ensure clarity, coherence, and consistency. This may involve conducting thorough legal analysis, consulting with stakeholders, and engaging in rigorous proofreading and editing processes. Additionally, legislative drafting standards and guidelines can help promote uniformity and best practices in drafting legislation to minimize inconsistencies and enhance the effectiveness of the legislative framework.

2.3.2 Ambiguities: Ambiguities in legislative drafting refer to situations where the language used in laws, regulations, or subsidiary legislation can be reasonably interpreted in more than one way. These ambiguities can arise due to various factors, including unclear wording, lack of specificity, or unintended consequences. Addressing ambiguities is crucial for ensuring the

clarity, certainty, and effectiveness of the legislative framework. Ambiguities can occur in the following instances

i. Unclear Wording: Ambiguities often arise when legislative texts contain language that is imprecise, vague, or open to multiple interpretations. This can occur due to the use of general terms, undefined terms, or ambiguous phrases that do not clearly convey the intended meaning of the law.

ii. Lack of Specificity: Ambiguities may also result from a lack of specificity or detail in legislative provisions. When laws are drafted in broad or general terms without providing clear guidance or criteria for their application, ambiguity arises over how the law should be interpreted and implemented in practice.

iii. Multiple Interpretations: Ambiguities in legislative drafting can lead to different interpretations of the same provision by lawmakers, judges, regulators, and stakeholders. This can result in conflicting interpretations, legal uncertainty, and challenges in enforcing and applying the law consistently.

iv. Unintended Consequences: Ambiguities may have unintended consequences that deviate from the legislative intent or objectives. For example, ambiguous language may create loopholes, unintended exemptions, or unintended burdens on regulated entities, undermining the effectiveness of the law.

v. Ambiguities of Reference: Ambiguities can also arise from references to external sources, such as other laws, regulations, or legal principles. When legislative texts refer to external sources without providing clear definitions or parameters, ambiguity arises over how those external sources should be interpreted and applied in the context of the law.

vi. Contextual Ambiguities: Ambiguities may be contextual, meaning that the meaning of a provision depends on the surrounding context or the legislative intent. Contextual ambiguities

can arise when legislative texts are unclear or inconsistent in their structure, organization, or formatting, making it difficult to discern the intended meaning of specific provisions. Addressing ambiguities in legislative drafting requires careful attention to language, clarity, and precision in expressing legislative intent. This may involve clarifying definitions, providing clear examples, incorporating technical terms, and aligning the language of the law with its intended purpose and objectives. Additionally, engaging in stakeholder consultation, legal review, and rigorous proofreading and editing processes can help identify and resolve ambiguities to ensure the effectiveness and enforceability of the legislative framework.

2.3.3 Procedural irregularities: This refers to deviations or departures from established procedures, protocols, or standards during the process of drafting laws, regulations, or subsidiary legislation. These irregularities can occur at various stages of the drafting process and may result from administrative oversight, procedural shortcuts, or lack of adherence to established norms. Addressing procedural irregularities is crucial for maintaining the integrity, transparency, and legitimacy of the legislative process. It can occur in the following ways;

i. Stakeholder Consultation: Procedural irregularities may occur if there is insufficient consultation with stakeholders during the drafting process. Stakeholder consultation is essential for gathering input, feedback, and expertise from affected parties, including government agencies, industry associations, civil society organizations, and the public. Failure to adequately engage stakeholders may result in laws that do not reflect the diverse interests and perspectives of those affected by the legislation.

ii. Transparency and Accountability: Procedural irregularities can undermine transparency and accountability in the legislative process. This may include lack of public access to draft legislation, inadequate disclosure of draft proposals, or limited opportunities for public participation and scrutiny. Transparency and accountability are essential for promoting public

trust, fostering informed decision-making, and holding policymakers accountable for their actions.

iii. **Internal Review Processes:** Procedural irregularities may occur if there are deficiencies in the internal review processes within legislative drafting offices or government agencies. This may include inadequate review of draft legislation for legal accuracy, consistency, and compliance with established procedures. Effective internal review processes are essential for identifying and correcting errors, inconsistencies, and procedural irregularities before legislation is finalized and enacted.

iv. **Legislative Timing and Deadlines:** Procedural irregularities can arise if there are delays or expedited timelines imposed on the legislative process. Rushed or hasty drafting may result in inadequate consideration of complex issues, insufficient consultation with stakeholders, and errors or oversights in the final legislation. Conversely, excessive delays in the legislative process may impede timely decision-making and enactment of necessary laws.

v. **Compliance with Legislative Rules and Protocols:** Procedural irregularities may occur if there is non-compliance with established legislative rules, protocols, or parliamentary procedures. This may include violations of procedural safeguards, such as the requirement for multiple readings of bills, public hearings, or committee deliberations. Failure to adhere to legislative rules undermines the integrity and legitimacy of the legislative process and may lead to legal challenges or constitutional violations.

Addressing procedural irregularities in legislative drafting requires adherence to established procedures, transparency in decision-making, and accountability for actions taken during the drafting process. This may involve strengthening stakeholder consultation mechanisms, improving internal review processes, enhancing transparency and disclosure requirements, and upholding legislative rules and protocols to ensure the integrity and legitimacy of the legislative

framework.

2.3.4. Drafting practices: This refers to the methodologies, techniques, and standards used in the process of drafting laws, regulations, or subsidiary legislation. Effective drafting practices are essential for producing clear, coherent, and enforceable legislative texts that accurately reflect the legislative intent and serve the needs of stakeholders and the public. Below are the key aspects of drafting practices in legislative drafting:

i. Clarity and Precision: Drafting practices emphasize the use of clear and precise language to convey legislative intent accurately. This involves avoiding ambiguity, vagueness, or overly complex language that may lead to confusion or misinterpretation. Clear and precise drafting facilitates understanding, compliance, and enforcement of the law.

ii. Consistency and Coherence: Drafting practices aim to ensure consistency and coherence in legislative texts by maintaining uniformity in language, structure, and formatting. Consistent terminology, numbering, and organization help readers navigate and interpret the law more effectively. Coherent drafting aligns provisions logically and ensures that related provisions are harmonized and integrated seamlessly.

iii. Simplicity and Accessibility: Drafting practices prioritize simplicity and accessibility to make legislative texts understandable and accessible to a wide audience. This involves using plain language, avoiding unnecessary jargon or legalistic terminology, and providing explanatory notes or definitions for technical terms. Simplified drafting enhances transparency, public participation, and compliance with the law.

iv. Precision and Specificity: Drafting practices emphasize precision and specificity in defining rights, obligations, and legal concepts to minimize ambiguity and uncertainty. Specificity ensures that legislative provisions are narrowly tailored to achieve their intended objectives without unintended consequences or loopholes. Precision in drafting facilitates consistent

interpretation and application of the law by courts, regulators, and stakeholders.

v. Stakeholder Consultation: Drafting practices may involve consultation with stakeholders, including government agencies, industry associations, civil society organizations, and the public. Stakeholder consultation helps gather input, feedback, and expertise to inform the drafting process, identify potential issues or concerns, and build consensus around proposed legislation. Effective stakeholder engagement enhances the legitimacy, credibility, and acceptance of the law.

iv. Legal Accuracy and Compliance: Drafting practices prioritize legal accuracy and compliance with constitutional principles, statutory requirements, and established legal norms. This includes ensuring that legislative texts are consistent with higher-level laws, adhere to procedural requirements, and respect fundamental rights and freedoms. Legal accuracy enhances the enforceability and legitimacy of the law and reduces the risk of legal challenges or constitutional violations.

v. Review and Revision: Drafting practices involve rigorous review and revision of draft legislation to identify and correct errors, inconsistencies, or deficiencies. This may include legal review by legislative counsel, expert analysis by subject matter specialists, and input from stakeholders. Review and revision processes ensure that legislative texts meet quality standards, reflect legislative intent accurately, and address stakeholder concerns effectively.

iv. Documentation and Transparency: Drafting practices may involve documenting the drafting process and ensuring transparency in decision-making and accountability for actions taken. This may include maintaining records of consultations, revisions, and comments received during the drafting process, as well as disclosing draft legislation to the public for review and feedback. Documentation and transparency enhance accountability, public trust, and the legitimacy of the legislative process.

Overall, drafting practices in legislative drafting aim to produce high-quality legislative texts that are clear, coherent, accessible, and legally sound. By adhering to established drafting practices and principles, drafters can enhance the effectiveness, legitimacy, and acceptance of the law and contribute to the rule of law and good governance.

2.3.5 Efficacy: This refers to the effectiveness, efficiency, and success of the drafting process in achieving its intended objectives and outcomes. It encompasses various factors, including the clarity, coherence, enforceability, and impact of legislative texts on stakeholders and society as a whole. Efficacy in legislative drafting is essential for ensuring that laws, regulations, or subsidiary legislation serve their intended purpose, address pressing issues, and contribute to the advancement of public policy goals. Below are the key aspects of efficacy in legislative drafting:

- i. Effectiveness: Efficacy in legislative drafting entails producing laws or regulations that effectively address identified problems, fulfil legislative intent, and achieve desired policy objectives. Effective legislative texts provide clear guidance, establish enforceable rights and obligations, and facilitate the achievement of public policy goals, such as promoting public health, safety, welfare, or economic development.
- ii. Clarity and Accessibility: Efficacy in legislative drafting requires ensuring that legislative texts are clear, coherent, and accessible to all stakeholders, including lawmakers, regulators, judges, legal practitioners, businesses, and the general public. Clear and accessible drafting enhances understanding, compliance, and enforcement of the law, reduces ambiguity and legal uncertainty, and promotes public trust and confidence in the legislative process.
- iii. Enforceability and Compliance: Efficacy in legislative drafting involves drafting laws or regulations that are enforceable.

2.3.6 Transparency and accountability: are essential principles in legislative drafting that ensure openness, fairness, and public trust in the legislative process. Transparency refers to the accessibility of information, decision-making processes, and outcomes, while accountability involves being answerable for actions, decisions, and responsibilities. Incorporating transparency and accountability into legislative drafting practices enhances the integrity, legitimacy, and effectiveness of the legislative framework. Here's an elaboration on the key aspects of transparency and accountability in legislative drafting:

i. Access to Information: Transparency in legislative drafting entails providing stakeholders, including lawmakers, regulators, legal practitioners, businesses, and the public, with access to relevant information, documents, and data related to the drafting process. This includes making draft legislation, legislative proposals, consultation documents, and supporting materials available for review and feedback. Access to information enables stakeholders to understand the rationale behind proposed legislation, assess its potential impact, and participate meaningfully in the legislative process.

ii. Public Participation: Transparency in legislative drafting involves facilitating public participation and engagement in the decision-making process. This may include conducting public consultations, hearings, or stakeholder forums to solicit input, feedback, and perspectives from affected parties. Public participation ensures that diverse interests, concerns, and viewpoints are considered in the development of legislation, promoting inclusivity, legitimacy, and accountability in the legislative process.

iii. Disclosure of Interests: Transparency in legislative drafting requires disclosing any conflicts of interest, biases, or affiliations that may influence the drafting process or decision-making. This includes identifying and addressing potential conflicts of interest among lawmakers, drafters, lobbyists, or stakeholders involved in shaping legislative proposals. Disclosure of

interests promotes integrity, impartiality, and ethical conduct in legislative drafting, fostering public trust and confidence in the legislative process.

iv. Consultation and Collaboration: Transparency in legislative drafting entails fostering collaboration and consultation among stakeholders to promote informed decision-making and consensus-building. This may involve engaging with government agencies, industry associations, civil society organizations, legal experts, and other stakeholders to gather input, expertise, and feedback on proposed legislation. Consultation and collaboration enhance the quality, effectiveness, and legitimacy of legislative outcomes, reflecting diverse perspectives and interests.

v. Documentation and Record-Keeping: Transparency in legislative drafting involves maintaining accurate and comprehensive records of the drafting process, including meeting minutes, correspondence, revisions, and comments received. Documenting the drafting process ensures accountability for decisions made, tracks changes over time, and provides a transparent record of the legislative history. Documentation and record-keeping promote accountability, traceability, and oversight in the legislative process, enabling stakeholders to understand and assess the integrity of legislative outcomes.

vi. Accountability Mechanisms: Accountability in legislative drafting entails establishing mechanisms to hold lawmakers, drafters, and decision-makers accountable for their actions, decisions, and responsibilities. This may include legislative oversight, parliamentary scrutiny, judicial review, or public scrutiny of legislative outcomes. Accountability mechanisms provide checks and balances on the exercise of legislative power, ensuring compliance with legal standards, procedural requirements, and ethical norms.

By incorporating transparency and accountability into legislative drafting practices, lawmakers and drafters can promote openness, integrity, and public trust in the legislative process.

Transparency and accountability enhance the legitimacy, effectiveness, and responsiveness of legislative outcomes, contributing to good governance, rule of law, and democratic principles.

2.3.7 Stakeholder consultation: This refers to the process of engaging with relevant stakeholders, including government agencies, industry associations, civil society organizations, legal experts, businesses, and the public, to gather input, feedback, and perspectives on proposed legislation. Stakeholder consultation is a critical aspect of the legislative drafting process, as it promotes inclusivity, transparency, and legitimacy by ensuring that diverse interests, concerns, and viewpoints are considered in the development of laws, regulations, or subsidiary legislation. Here's an elaboration on the key aspects of stakeholder consultation in legislative drafting:

i. Identification of Stakeholders: The first step in stakeholder consultation is identifying the relevant stakeholders who may be affected by or have an interest in the proposed legislation. This may include government agencies responsible for implementing the law, industry associations representing affected sectors, civil society organizations advocating for specific interests or causes, legal experts providing technical expertise, businesses impacted by regulatory changes, and members of the public affected by the law.

ii. Engagement Strategies: Stakeholder consultation involves developing and implementing strategies to engage with stakeholders effectively. This may include organizing public hearings, workshops, roundtable discussions, focus groups, or online consultations to solicit input, feedback, and perspectives on the proposed legislation. Engagement strategies should be tailored to the needs and preferences of different stakeholder groups, ensuring meaningful participation and representation in the consultation process.

iii. Information Sharing: Stakeholder consultation requires providing stakeholders with relevant information, documents, and data related to the proposed legislation to facilitate

informed decision-making and meaningful participation. This may include sharing draft legislation, policy proposals, impact assessments, research findings, and explanatory materials to help stakeholders understand the purpose, scope, and potential implications of the proposed legislation.

iv. Opportunity for Feedback: Stakeholder consultation provides stakeholders with opportunities to provide feedback, comments, suggestions, or concerns on the proposed legislation. This may involve soliciting written submissions, oral presentations, or responses to specific questions or issues raised during the consultation process. Providing multiple avenues for feedback ensures that stakeholders can express their views and perspectives in a variety of formats and channels.

v. Dialogue and Collaboration: Stakeholder consultation fosters dialogue and collaboration among stakeholders to promote constructive engagement, consensus-building, and problem-solving. This may involve facilitating discussions, negotiations, or working groups to address contentious issues, reconcile conflicting interests, or identify common ground. Dialogue and collaboration enable stakeholders to contribute to the development of legislation in a collaborative and cooperative manner, enhancing the quality, effectiveness, and legitimacy of legislative outcomes.

vi. Integration of Feedback: Stakeholder consultation requires integrating feedback received from stakeholders into the drafting process to refine and improve the proposed legislation. This may involve revising draft provisions, addressing concerns raised by stakeholders, incorporating alternative perspectives, or clarifying ambiguities identified during the consultation process. Integrating feedback ensures that the final legislation reflects a balanced and informed approach that takes into account the diverse interests and viewpoints of stakeholders.

vii. Documentation and Reporting: Stakeholder consultation involves documenting and reporting on the consultation process, including summarizing feedback received, documenting decisions made, and reporting on how stakeholder input has been incorporated into the drafting process. Documentation and reporting provide transparency and accountability, allowing stakeholders to track the progress of the consultation process and understand how their input has influenced the development of legislation.

By incorporating stakeholder consultation into legislative drafting practices, lawmakers and drafters can promote inclusivity, transparency, and legitimacy in the legislative process. Stakeholder consultation enhances the quality, effectiveness, and acceptance of legislative outcomes by ensuring that diverse perspectives and interests are considered and reflected in the development of laws, regulations, or subsidiary legislation.

2.3.8 Plain language: This refers to the use of clear, simple, and understandable language to communicate legal concepts, rights, obligations, and procedures in laws, regulations, or subsidiary legislation. Plain language drafting aims to make legal texts accessible to a wide audience, including lawmakers, legal practitioners, regulators, businesses, and the general public, by avoiding unnecessary complexity, jargon, and ambiguity. The key aspects of plain language in legislative drafting:

i. Clarity and Understandability: Plain language drafting prioritizes clarity and understandability by using language that is clear, straightforward, and easy to comprehend. This involves using familiar words and phrases, avoiding technical or legalistic terminology, and organizing information in a logical and intuitive manner. Clarity ensures that legislative texts are accessible to all stakeholders, regardless of their level of legal expertise or background.

ii. **Simplicity and Conciseness:** Plain language drafting emphasizes simplicity and conciseness in expressing legal concepts and provisions. This includes using short sentences, active voice, and plain syntax to convey information efficiently and effectively. Simplified drafting reduces the risk of confusion, misinterpretation, or misunderstanding, making it easier for readers to grasp the meaning and intent of the law.

iii. **Avoidance of Legalese and Jargon:** Plain language drafting eschews the use of unnecessary legalese, technical terminology, or obscure jargon that may be unfamiliar to readers. Instead, it employs everyday language that is commonly understood and easily accessible to a broad audience. Avoiding legalese and jargon ensures that legislative texts are inclusive and comprehensible to all stakeholders, including non-experts and laypersons.

iv. **Use of Examples and Explanatory Notes:** Plain language drafting may incorporate examples, illustrations, or explanatory notes to clarify complex concepts or procedures and provide practical guidance to readers. Examples help to illustrate the application of legal principles in real-world scenarios, while explanatory notes provide additional context and explanation to aid understanding. Using examples and explanatory notes enhances the accessibility and usability of legislative texts, particularly for readers who may be unfamiliar with legal concepts.

v. **Formatting and Presentation:** Plain language drafting pays attention to formatting and presentation to enhance readability and usability. This may include using headings, bullet points, lists, and tables to organize information and break up text into manageable chunks. Clear formatting and presentation improve the navigability and comprehension of legislative texts, allowing readers to locate information quickly and easily.

vi. **Accessibility Considerations:** Plain language drafting takes into account the diverse needs and abilities of readers, including those with disabilities or limited literacy skills. This may

involve using plain language guidelines, readability tests, or accessibility standards to ensure that legislative texts are inclusive and accessible to all individuals, regardless of their background or circumstances.

vi. User Testing and Feedback: Plain language drafting may involve conducting user testing or soliciting feedback from stakeholders to assess the clarity, usability, and effectiveness of legislative texts. User testing helps identify areas for improvement and ensures that legislative texts meet the needs and expectations of their intended audience. Incorporating feedback from stakeholders enhances the quality and usability of legislative drafting, contributing to better understanding and compliance with the law.

By incorporating plain language principles into legislative drafting practices, lawmakers and drafters can enhance the accessibility, transparency, and effectiveness of legislative texts, fostering greater public understanding, engagement, and compliance with the law. Plain language drafting promotes inclusivity, empowers individuals to understand and exercise their rights and obligations, and strengthens the rule of law in society.

2.4 Historical Background of Subsidiary Legislation

The use of subsidiary legislation, also known as delegated or secondary legislation, dates back centuries with its roots lying in various legal systems around the world. Early Precedents began from Ancient Rome, when the Plebsian Councils could issue plebiscites, decrees with legislative force, alongside the laws passed by the Roman Senate. At medieval England: Royal proclamations and decrees supplemented common law and statutes passed by Parliament. At Holy Roman Empire: The Emperor issued edicts, proclamations with general legal force, alongside decrees with limited scope.²⁴

²⁴ AW Arnall, *The English constitution. An outline of constitutional law and history* (1986) Cambridge Univer Baldwin, R. E. (1995). Regulatory instruments in the United States and Germany: Comparing apples and oranges*. *Governance*, 8(4), 354-375. University Press.

2.4.1 Formalization and Growth

In the 16th-18th Centuries, European monarchies increasingly relied on royal prerogative to issue regulations and orders, particularly in areas like taxation and economic affairs. In the 19th Century. With the rise of modern parliaments and complex governance, the use of subsidiary legislation grew rapidly. Enabling Acts granted government agencies and local authorities power to issue regulations within specific contexts. In the 20th-21st Centuries: The use of subsidiary legislation has become widespread globally, covering diverse areas like health and safety, financial regulations, and environmental protection.²⁵

2.4.2 Key Drivers of Growth

Complexity of modern legislation. Primary legislation often needs detailed regulations to effectively implement its provisions. Executive efficiency. Delegated legislation allows for quicker and more flexible adaptation to changing circumstances compared to the formal legislative process. Technical expertise. Government agencies can leverage their specialized knowledge to draft regulations specific to their fields.²⁶

2.4.3 Challenges and Debates²⁷

- i. Accountability and democratic legitimacy: Concerns exist about potential for excessive power concentration in the executive branch and lack of adequate parliamentary oversight.
- ii. Transparency and accessibility: Ensuring access to and understanding of complex regulations remains a challenge for citizens and stakeholders.

²⁵ Ibid.

²⁶ PP Craig, *Administrative law* (7th ed. Oxford University Press 2014)

²⁷ Council of Europe. (2004). Compendium of good practices in public administration: Regulatory policy. <<https://op.europa.eu/en/publication-detail/-/publication/3e89d981-48fc-11e8-be1d-01aa75ed71a1/language-en>> accessed 16th December, 2023.

- iii. Balancing flexibility with legal certainty: Finding the right balance between adaptability and maintaining clear and predictable legal norms is crucial.

2.5 Literature Review

This research embarks on a comprehensive survey of the existing academic literature pertaining to the drafting of subsidiary legislation in Nigeria, with a particular focus on the practices employed by the Central Bank of Nigeria (CBN). By critically examining a range of scholarly contributions, this review aims to establish a robust theoretical and empirical foundation for the subsequent analysis of the CBN's regulatory instrument drafting methodologies.

Drawing upon diverse perspectives and research methodologies, this literature review seeks to illuminate both the strengths and shortcomings of the current framework for drafting subsidiary legislation within the CBN context.

Akintola in his work titled “Subsidiary legislation and regulatory power in Nigeria: A study of the Central Bank of Nigeria”.²⁸ The article specifically examines the Central Bank of Nigeria (CBN) within the larger context of subsidiary legislation in Nigeria, offering valuable insights into the Bank's unique regulatory framework and practices. Akintola provides a thorough analysis of the legal basis for the CBN's authority to issue subsidiary legislation, drawing upon relevant statutes and judicial pronouncements. The article critically examines the delegation of legislative power to the CBN, highlighting potential concerns about accountability and transparency. Akintola showcases specific examples of CBN's subsidiary legislation, illustrating the practical application of principles and identifying areas for potential improvement.

²⁸ OA Akintola, ‘Subsidiary legislation and regulatory power in Nigeria: A study of the Central Bank of Nigeria’. *International Journal of Law and Public Policy* [2018] 4(2), 38-48

The study primarily focuses on the legal framework and delegation of powers, with less emphasis on the actual drafting practices and techniques employed by the CBN. An in-depth analysis of language clarity, structure, and consistency within specific instruments could further enrich the research. While the article touches upon accountability concerns, a deeper investigation into the effectiveness of CBN's regulations and compliance challenges faced by regulated entities would add valuable practical insights.

Although Akintola acknowledges the existence of best practices in other jurisdictions, a more detailed comparison of CBN's drafting practices with other central banks could offer relevant recommendations for improvement. The article published in 2018 might not capture the latest advancements in financial regulation and legislative drafting practices. Updating the analysis with newer examples and research developments could strengthen its relevance.

Overall, Akintola's article provides a valuable starting point for understanding the legal framework and delegation of powers underlying CBN's subsidiary legislation. His article gives a gap by not laying particular emphasis on actual drafting practices and techniques employed by the CBN. However, addressing the identified gaps by delving deeper into specific drafting practices, effectiveness, comparative analysis, and recent developments could significantly enrich the research and offer more actionable insights for improving the CBN's regulatory framework.

Emenyonu, N. E.²⁹ in his work titled “ The delegation of legislative power to the Central Bank of Nigeria: An appraisal”. The article delves deeply into the delegation of legislative power to the CBN, examining its historical context, constitutional basis, and potential challenges. Emenyonu raises vital concerns about accountability and transparency in the exercise of the CBN's delegated legislative power, proposing potential safeguards. The article advocates for a

²⁹ NE Emenyonu, ‘The delegation of legislative power to the Central Bank of Nigeria: An appraisal’. *Journal of African Law* [2011] 55 (3-4), 406-425.

robust public interest review mechanism to ensure that CBN's regulations align with broader societal needs and aspirations. Emenyonu draws comparisons with other countries, highlighting different approaches to delegating legislative power to central banks and offering lessons for Nigeria.

Similar to Akintola's article, the research primarily focuses on the legal and constitutional aspects of delegation, with less exploration of the practical implications on subsidiary legislation drafting and its effectiveness. The article does not delve into the specific drafting techniques and principles employed by the CBN, hindering a comprehensive understanding of the quality and accessibility of its regulatory instruments. Emenyonu's analysis primarily utilizes legal arguments and case studies. Integrating the perspectives of regulated entities, civil society organizations, and other stakeholders could enrich the understanding of practical challenges and potential solutions. Published in 2011, the article might not capture the latest trends in financial regulation and legal frameworks governing central bank powers. Updating the analysis with newer legislation and case law would improve its relevance.

Overall, Emenyonu's article provides valuable insights into the legal framework and potential risks associated with delegating legislative power to the CBN. However, addressing the identified gaps by analyzing drafting techniques, stakeholder perspectives, and recent developments could strengthen the research and offer more practical recommendations for ensuring accountability and effectiveness in the CBN's regulatory framework.

Osuala, E. C.³⁰ in his work titled “ The legal framework for monetary policy in Nigeria”. This article specifically analyzes the legal framework supporting the Central Bank of Nigeria's (CBN) monetary policy, offering valuable insights into a key area of the bank's regulatory power. Osuala provides a detailed examination of the CBN Act 2007 and other relevant

³⁰ EC Osuala, ‘The legal framework for monetary policy in Nigeria’. *Journal of African Law* [2007] 51(3-4), 462-482.

statutes, identifying the sources of authority and limitations on the bank's monetary policy instruments. The article explores the various objectives of CBN's monetary policy, such as price stability, financial system stability, and economic growth, highlighting the legal basis for each. Osuala analyzes the range of instruments employed by the CBN for monetary policy implementation, including reserve requirements, interest rates, and open market operations.

While focusing on monetary policy is valuable, the article does not comprehensively explore the legal framework for CBN's entire regulatory toolkit. A broader analysis encompassing other areas like prudential regulation, anti-money laundering, and consumer protection would offer a more holistic understanding of the bank's power and responsibilities. The focus on legal foundations does not delve into the actual drafting practices of CBN's monetary policy instruments. Examining language clarity, coherence, and accessibility within these instruments could reveal potential improvements for stakeholder understanding and compliance.

Osuala primarily analyzes the Nigerian legal framework, with limited comparison to other jurisdictions. Exploring best practices and challenges faced by other central banks in implementing monetary policy could offer valuable insights for potential improvements in the Nigerian context. Published in 2007, the article might not capture the latest legal and policy developments in monetary policy. Reviewing newer legislation, judicial pronouncements, and policy changes would improve the research's relevance and accuracy.

Overall, Osuala's article provides a valuable foundation for understanding the legal framework governing the CBN's monetary policy in Nigeria. However, addressing the identified gaps by broadening the scope to include other regulatory areas, analyzing drafting practices, conducting comparative analysis, and incorporating recent developments could significantly enrich the research and offer more comprehensive insights into the legal intricacies and potential areas for improvement within the CBN's monetary policy framework.

Akindoye O. in his work titled “ Legislative drafting in Nigeria: An imperative for good governance”.³¹ The article strongly emphasizes the crucial role of legislative drafting in achieving good governance, setting the stage for its relevance to the CBN's subsidiary legislation. Akindoye highlights the principles of clarity, precision, conciseness, and plain language as essential for ensuring comprehension and compliance with legislation. The article advocates for stakeholder participation in the legislative drafting process, promoting inclusivity and accountability. Akindoye draws comparisons with other jurisdictions, showcasing best practices and highlighting areas for improvement in Nigerian drafting practices.

While stressing the importance of good drafting, the article does not delve deeply into the specific challenges and nuances of drafting subsidiary legislation, particularly within the context of the CBN. A closer examination of CBN's drafting practices and specific instruments would provide more grounded insights. The discussion on principles like clarity and conciseness is somewhat general. Exploring specific drafting techniques, structures, and language choices employed by the CBN would offer more practical guidance for improving their subsidiary legislation. The article lacks an in-depth analysis of the effectiveness of CBN's current drafting practices. Examining cases where ambiguity or lack of clarity have created challenges for stakeholders could reveal concrete areas for improvement. Published in 2020, the article might not capture the latest developments in legislative drafting practices and technologies. Exploring emerging trends and their potential application to the CBN context could further strengthen the research.

Overall, Akindoye's article provides a valuable reminder of the importance of good legislative drafting for good governance. However, addressing the identified gaps by focusing on the specific context of the CBN, analyzing technical aspects and their effectiveness, and

³¹ O Akindoye, 'Legislative drafting in Nigeria: An imperative for good governance'. *Nigerian Journal of Contemporary Jurisprudence* [2020] 5(1), 164-188.

incorporating recent advancements could significantly enrich the research and offer more actionable recommendations for optimizing the drafting practices of Nigeria's central bank.

Anyaoku, C. C.³² in his work titled “ The Central Bank of Nigeria and the development of banking and finance in Nigeria ” The article strongly emphasizes the crucial role of legislative drafting in achieving good governance, setting the stage for its relevance to the CBN's subsidiary legislation. Akindoye highlights the principles of clarity, precision, conciseness, and plain language as essential for ensuring comprehension and compliance with legislation. The article advocates for stakeholder participation in the legislative drafting process, promoting inclusivity and accountability. Akindoye draws comparisons with other jurisdictions, showcasing best practices and highlighting areas for improvement in Nigerian drafting practices.

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³² CC Anyaoku, ‘The Central Bank of Nigeria and the development of banking and finance in Nigeria’. *African Journal of Law and Economics* [2010] 5(2), 367-382.

Overall, Akindoye's article provides a valuable reminder of the importance of good legislative drafting for good governance. However, addressing the identified gaps by focusing on the specific context of the CBN, analyzing technical aspects and their effectiveness, and incorporating recent advancements could significantly enrich the research and offer more actionable recommendations for optimizing the drafting practices of Nigeria's central bank.

Writing on the challenges of legal framework for the regulation of mobile money in Nigeria, Ezenwa, O. I.³³ in his work titled “ The challenges of legal framework for the regulation of mobile money in Nigeria” focuses on the timely and relevant topic of mobile money regulation, providing valuable insights into the specific challenges of this emerging technology in the Nigerian context. Ezenwa examines the existing legal framework governing mobile money, identifying gaps and inconsistencies that hinder its effectiveness. The article raises important concerns about consumer protection in the mobile money sphere, highlighting potential vulnerabilities and proposing safeguards. Ezenwa draws comparisons with other jurisdictions that have successfully regulated mobile money, offering lessons for potential improvements in Nigeria.

While focusing on the legal framework, the article could benefit from delving deeper into the regulatory practices and specific challenges faced by the CBN and other relevant authorities in regulating mobile money. The analysis primarily focuses on existing laws and regulations, with limited exploration of the actual drafting practices employed for mobile money-related instruments. Examining language clarity, coherence, and accessibility within these instruments could reveal potential improvements for stakeholder understanding and compliance.

Published in 2019, the article might not capture the latest legal and technological developments in mobile money regulation. Consulting newer legislation, policy changes, and technological

³³ OI Ezenwa, ‘The challenges of legal framework for the regulation of mobile money in Nigeria’. *Journal of African Law and International Affairs* [2019] 6(2), 132-148.

advancements would enhance the research's relevance and accuracy. Ezenwa mentions financial inclusion as a potential benefit of mobile money, but a deeper analysis of the actual impact on inclusion and potential challenges faced by underbanked populations would enrich the research.

Overall, Ezenwa's article provides a valuable starting point for understanding the challenges of the legal framework for mobile money regulation in Nigeria. However, addressing the identified gaps by examining regulatory practices, drafting techniques, recent developments, and the impact on financial inclusion could significantly strengthen the research and offer more comprehensive insights for effective and inclusive mobile money regulation in the Nigerian context.

Ayodele, O. (2012).³⁴ In her work titled “ The Central Bank of Nigeria and its regulatory powers: A critical analysis”. The article specifically examines the regulatory powers of the Central Bank of Nigeria (CBN), drawing attention to its critical role in the financial system. Ayodele critically assesses the CBN's powers, raising concerns about potential abuse, lack of transparency, and accountability challenges. The article emphasizes the importance of upholding the balance of powers within the legal framework, highlighting the need for checks and balances on the CBN's authority. Ayodele briefly draws comparisons with central banks in other countries, offering some insights into alternative approaches to regulatory power.

While focusing on the CBN's powers is essential, the article lacks depth in analyzing the practical exercise of these powers through specific regulatory practices and instruments. Exploring how the CBN applies its powers in different areas (e.g., monetary policy, prudential regulation) would provide a more nuanced understanding. The focus on legal powers does not delve into the specific drafting practices employed by the CBN in its regulatory instruments.

³⁴ O Ayodele, ‘The Central Bank of Nigeria and its regulatory powers: A critical analysis’. *African Journal of Legal Studies* [2012] 6(2), 169-182.

Examining clarity, consistency, and stakeholder participation in drafting could highlight potential areas for improvement. The article raises concerns about potential abuse of power but lacks a more specific analysis of the actual effectiveness of the CBN's regulations and the challenges faced by regulated entities in terms of compliance. Published in 2012, the article might not reflect the latest changes in legislation, judicial pronouncements, and financial regulations affecting the CBN's powers. Updating the analysis with more recent developments would enhance its relevance.

Overall, Ayodele's article raises important questions about the scope and accountability of the CBN's regulatory powers. However, addressing the identified gaps by analysing specific regulatory practices, drafting techniques, effectiveness and compliance, and incorporating recent developments could significantly strengthen the research and offer more practical insights for ensuring accountability and effectiveness in the exercise of the CBN's regulatory powers.

Egwun, O. C. in his work titled “ The role of the Central Bank of Nigeria in the implementation of anti-money laundering laws in Nigeria”.³⁵ The article focuses on the important and timely topic of the CBN's role in combating money laundering, highlighting its crucial contribution to financial integrity. Egwun analyses the relevant legal framework for anti-money laundering (AML) in Nigeria, outlining the CBN's powers and responsibilities within this context. The article explores specific regulatory initiatives undertaken by the CBN to combat AML, such as Know Your Customer (KYC) regulations and reporting requirements. Egwun identifies challenges faced by the CBN in effectively implementing AML laws, offering some recommendations for improvement.

³⁵ OC Egwun, ‘The role of the Central Bank of Nigeria in the implementation of anti-money laundering laws in Nigeria’. *African Journal of Criminology and Social Justice* [2017] 4(1), 45-58.

While focusing on the CBN's role is valuable, the article could benefit from delving deeper into the practical aspects of implementation, such as collaboration with other agencies, resource allocation, and enforcement activities. The article mentions challenges but lacks a deeper analysis of the actual effectiveness of the CBN's AML initiatives in curbing money laundering activities. Utilizing data and empirical evidence to support claims about challenges and effectiveness would strengthen the research's reliability and persuasiveness. Briefly exploring how other central banks tackle similar AML challenges could offer valuable insights and potential solutions for the Nigerian context. Published in 2017, the article might not capture the latest legal and technological advancements in AML regulations and international cooperation. Updating the analysis with recent developments would enhance its relevance.

Overall, Egwun's article provides a valuable starting point for understanding the CBN's role in combating money laundering in Nigeria. However, addressing the identified gaps by focusing on practical implementation, analysing effectiveness with data, including comparative analysis, and incorporating recent developments could significantly strengthen the research and offer more actionable recommendations for optimizing the CBN's AML initiatives and enhancing Nigeria's financial integrity.

Onyekachi, S. O.³⁶ “The Central Bank of Nigeria and the regulation of the insurance industry in Nigeria”. The article focuses on the CBN's regulatory role within the insurance industry, offering insights into a niche area not always covered in broader analyses. Onyekachi outlines the relevant legal framework governing the insurance industry in Nigeria, highlighting the CBN's powers and responsibilities within this context. The article mentions specific regulatory instruments issued by the CBN for the insurance industry, such as capital adequacy

³⁶ SO Onyekachi, ‘The Central Bank of Nigeria and the regulation of the insurance industry in Nigeria’. *International Journal of Business and Management* [2013] 8(11), 48-55.

requirements and corporate governance guidelines. Onyekachi briefly compares the Nigerian regulatory framework with other jurisdictions, offering some contextual perspective.

While focusing on the insurance industry is useful, the article could delve deeper into the practical application of the regulations by analysing specific cases or challenges faced by industry players. The article lacks a detailed analysis of the effectiveness of the CBN's regulations in ensuring the stability and growth of the insurance industry. Including perspectives from insurance companies, regulators, and consumers could provide a more nuanced understanding of the regulatory landscape and its impact. Published in 2013, the article might not capture the latest legislative and policy changes, technological advancements, or emerging risks affecting the insurance industry. Examining the clarity, consistency, and accessibility of the CBN's regulatory instruments for the insurance industry could identify areas for improvement in stakeholder understanding and compliance.

Overall, Onyekachi's article provides a basic overview of the CBN's role in regulating the insurance industry in Nigeria. However, addressing the identified gaps by analysing practical application, effectiveness, stakeholder perspectives, recent developments, and drafting practices could significantly strengthen the research and offer more actionable insights for optimizing the regulatory framework and promoting a robust and responsible insurance sector in Nigeria.

D.T. Adem. In his work titled “Legislative Drafting: Topical Approach”.³⁷ This Book provides a comprehensive overview of legislative drafting principles, techniques, and best practices, covering various types of legislation. This breadth offers a solid foundation for understanding the general principles applicable to subsidiary legislation. The book is well-organized and written in a clear and concise manner, making it accessible to both legal professionals and non-

³⁷ DT Adem, *Legislative drafting: Topical approach* (LexisNexis SA 2015)

experts. Adem offers practical tips and exercises throughout the book, allowing readers to apply the theoretical concepts to real-world scenarios. While not solely focused on Nigeria, the book incorporates relevant Nigerian legal principles and references, providing some context for applying the principles to the CBN case study.

While the book touches on subsidiary legislation, it primarily focuses on primary legislation, with less emphasis on the specific nuances and challenges of drafting subsidiary instruments. A deeper dive into the unique considerations for drafting subsidiary legislation, especially within the context of the CBN, would be valuable.

The book lacks specific examples and case studies of CBN subsidiary legislation, hindering a nuanced understanding of the Bank's actual drafting practices. Including real-world examples would allow for a more concrete analysis of strengths, weaknesses, and potential improvements. The book could benefit from a comparative analysis of subsidiary legislation drafting practices in other jurisdictions, particularly those with similar central bank structures or regulatory frameworks. This could offer insights into alternative approaches and best practices applicable to the CBN context.

The book was published in 2015, and the legal landscape of subsidiary legislation drafting, especially in the financial sector, can evolve quickly. Updating the analysis to incorporate recent legislative changes, judicial pronouncements, and international best practices would enhance the book's relevance for the CBN case study. *Drafting Techniques for Clarity and Accessibility*: While the book mentions clarity and accessibility as important principles, it could delve deeper into specific drafting techniques, such as plain language principles, that are particularly relevant for ensuring the effectiveness of subsidiary legislation for various stakeholders, including non-legal professionals affected by the CBN's regulations.

Finally, provides a valuable foundation for understanding general legislative drafting principles. However, addressing the identified gaps by focusing specifically on subsidiary legislation, utilizing CBN-specific examples, incorporating comparative analysis and recent developments, and exploring techniques for enhanced clarity and accessibility would significantly strengthen the book's relevance and usefulness for the CBN case study.

Adem D.T. in his work titled “Legislative Drafting Manual”.³⁸ The manual adopts a practical approach, offering clear and concise instructions, checklists, and examples to guide readers through the legislative drafting process. Adem presents the drafting process in a step-by-step manner, making it easy for beginners to follow and understand. The manual consistently emphasizes the importance of clear and concise language in legislative drafting, providing valuable tips and techniques for achieving this goal. Adem incorporates relevant Nigerian legal principles and references throughout the manual, ensuring its applicability to the specific context of drafting Nigerian legislation. While focusing on primary legislation, the manual also touches on subsidiary legislation, offering some general guidance applicable to this category.

The manual provides only a brief overview of subsidiary legislation and its drafting peculiarities. A more in-depth analysis of the specific considerations and challenges of drafting subsidiary instruments, particularly within the Central Bank of Nigeria context, would have been beneficial. The manual lacks concrete examples of CBN subsidiary legislation, hindering a deeper understanding of the Bank's actual drafting practices and potential areas for improvement. The manual could benefit from incorporating insights from other jurisdictions' experiences with subsidiary legislation drafting, especially those with similar central bank structures or regulatory frameworks. The focus on primary legislation might overshadow the unique considerations for subsidiary legislation, which often face different challenges and

³⁸ DT Adem, *Legislative Drafting Manual* (LexisNexis SA 2014)

require different drafting approaches. Published in 2014, the manual might not reflect recent changes in the legal landscape of legislative drafting, particularly in the financial sector, which can evolve quickly. Updating the analysis to incorporate recent legal developments and best practices would enhance the manual's relevance.

Adem's "Legislative Drafting Manual" provides a valuable practical guide for understanding and applying general legislative drafting principles in the Nigerian context. However, addressing the identified gaps by focusing more specifically on subsidiary legislation, incorporating CBN-specific examples and comparative analysis, and updating the content with recent developments would significantly strengthen the manual's usefulness for the Central Bank of Nigeria case study and potentially offer more targeted recommendations for optimizing the Bank's drafting practices.

Adem D.T. in his work titled "Forbidden Devices in Legislative Drafting".³⁹ This book tackles a crucial but often overlooked aspect of legislative drafting - identifying and explaining the use of forbidden devices. This provides valuable insight into how to avoid ambiguity and ensure clear, effective legislation. Adem covers a wide range of forbidden devices, including ambiguous language, tautology, redundancy, and archaic expressions. This thoroughness helps drafters identify and eliminate potential pitfalls. Each forbidden device is clearly defined and illustrated with concrete examples, making the book accessible to both legal professionals and non-experts.

The book incorporates relevant Nigerian legal principles and references, ensuring its applicability to the specific context of drafting legislation in Nigeria. Adem offers suggestions for alternative language and drafting techniques to replace forbidden devices, making the book directly actionable for drafters.

³⁹ DT Adem, *Forbidden Devices in Legislative Drafting* (LexisNexis, SA 2014).

The book primarily focuses on primary legislation, with less emphasis on the potential use and impact of forbidden devices in subsidiary legislation, particularly within the Central Bank of Nigeria context. A deeper analysis of this specific context would be valuable. Lack of CBN-Specific Examples: While the book provides general examples, incorporating real-world examples of forbidden devices used in CBN subsidiary legislation would offer a more concrete understanding of the challenges faced and potential solutions.

Examining how other jurisdictions handle forbidden devices in their legislative drafting could offer valuable insights and best practices applicable to the Nigerian context. The clear-cut nature of identifying and avoiding forbidden devices might overshadow the nuances of language and context that can influence their interpretation and impact. A more nuanced discussion of these complexities would be beneficial. While avoiding forbidden devices is crucial, the book could also explore alternative approaches, such as using ambiguous language strategically in specific contexts.

Adem's "Forbidden Devices in Legislative Drafting" provides a valuable resource for understanding and avoiding common pitfalls in legislative drafting. However, addressing the identified gaps by focusing more specifically on subsidiary legislation, incorporating CBN-specific examples and comparative analysis, acknowledging the complexities of language, and exploring alternative approaches could significantly strengthen the book's relevance for the Central Bank of Nigeria case study and potentially offer more comprehensive guidance for drafters navigating the intricacies of clear and effective legislation.

Adem D.T. in his work titled "The Law of Legislative Drafting in Nigeria".⁴⁰ Adem provides a comprehensive overview of the legal framework governing legislative drafting in Nigeria, including relevant statutes, constitutional provisions, and judicial pronouncements. This offers

⁴⁰ DT Adem, *The Law of Legislative Drafting in Nigeria* (LexisNexis, SA 2013)

a solid foundation for understanding the legal principles and constraints within which drafters operate.

The book specifically focuses on the Nigerian legal system, making it directly relevant to the Central Bank of Nigeria case study. This provides valuable insights into the specific challenges and considerations faced by Nigerian drafters. Adem delves into the core principles of legislative drafting, such as clarity, conciseness, and consistency, and provides practical techniques for applying these principles in different contexts. This equips drafters with the tools needed to craft effective legislation. The book covers various types of legislation, including primary and subsidiary legislation, and addresses the specific drafting considerations applicable to each type. This provides a broader understanding of the drafting landscape in Nigeria. Adem sheds light on the parliamentary procedures involved in the legislative process, which is crucial for understanding how draft legislation is adopted and implemented.

While the book mentions subsidiary legislation, it primarily focuses on primary legislation. A deeper analysis of the specific legal framework and drafting practices applicable to CBN subsidiary instruments would be valuable for the case study. The book lacks concrete examples of CBN subsidiary legislation, hindering a nuanced understanding of the Bank's actual drafting practices and potential areas for improvement.

Examining how other jurisdictions handle legislative drafting, particularly those with similar central bank structures, could offer valuable insights and best practices applicable to the Nigerian context. The book focuses more on the legal principles and rules than on the practical application of these principles in real-world drafting scenarios. Providing practical exercises or case studies could enhance the book's utility for drafters. Published in 2013, the book might not reflect recent changes in the legal landscape of legislative drafting, particularly in the

financial sector. Updating the content with recent legal developments and best practices would enhance its relevance.

Adem's "The Law of Legislative Drafting in Nigeria" provides a comprehensive and valuable resource for understanding the legal framework and principles of legislative drafting in the Nigerian context. However, addressing the identified gaps by focusing more specifically on CBN subsidiary legislation, incorporating CBN-specific examples and comparative analysis, emphasizing practical application, and updating the content with recent developments would significantly strengthen the book's relevance and usefulness for the Central Bank of Nigeria case study.

CHAPTER THREE

LEGAL FRAMEWORK OF SUBSIDIARY LEGISLATION IN NIGERIA

This chapter delved into the legal framework on drafting subsidiary legislation. It examined the laws, judicial decisions and judicial principles in subsidiary legislation, Understanding the legal framework governing subsidiary legislation is essential for navigating the regulatory landscape in Nigeria.⁴¹

3.1 Key Sources of Subsidiary Legislation

3.1.1 The Constitution of the Federal Republic of Nigeria, 1999 (as altered). This supreme law of the land empowers various bodies, including the President, Ministers, and government agencies, to make subsidiary legislation within specific powers granted to them. The Constitution of the Federal Republic of Nigeria, 1999 (as altered), serves as the foundational legal document of the nation, outlining the structure of government, fundamental rights, and principles governing power dynamics. Within this framework, the Constitution plays a crucial role in empowering various bodies to make subsidiary legislation, also known as delegated or secondary legislation.

Key Provisions

(a) Section 60 of the Constitution of the Federal Republic of Nigeria 1999 (CFRN) grants the National Assembly (NASS) the power to regulate its own proceedings. This power is critical for ensuring the smooth functioning of the legislature and maintaining its independence from other branches of government. Pursuant to this section the Senate and House of Representatives of the National Assembly issue the Senate and House Standing Orders.

⁴¹ LO Akpomuje, 'The doctrine of delegated legislation in Nigeria: A critical appraisal'. *Journal of African Law* [2008] 52(1), 1-32.

(b) Section 101 of the Constitution of the Federal Republic of Nigeria 1999 (CFRN) grants each State House of Assembly (SHA) the power to regulate its own proceedings. This power mirrors that granted to the National Assembly under Section 60 and plays a vital role in ensuring the smooth functioning and independence of the state legislatures. Pursuant to this section, each state House of Assembly in Nigeria has standing orders guiding its legislative business.

(c) Section 254: This Section grants the Chief Judge of the Federal High Court to make rules for regulating the practice and procedure of the Federal High Court. This power to make regulations align with the concept of subsidiary legislation, enabling the Chief Judge to provide detailed guidelines within the framework set by the legislative body.

(d) Section 148(1): This empowers the President, with the advice of the Federal Executive Council (including Ministers), to make "regulations for the purpose of carrying out any of the provisions of this Constitution within authorized spheres like education, health, and local government administration.

3.1.2 The Interpretation Act

It serves as a guidebook, deciphering the meanings and applications of legal provisions. The Interpretation Act is a key piece of legislation that sets out general rules for the interpretation of laws and regulations in Nigeria. This indispensable legal tool ensures consistency and coherence in the interpretation of laws, fostering a precise and uniform understanding across the legal landscape.

Key provision

Section 37 of the Interpretation Act defines subsidiary legislation as including orders, regulations, rules, bye-laws, and other similar instruments made under a valid delegation of legislative power. This section elucidates the authority by which such legislation is enacted,

emphasizing that the power to make subsidiary laws should be expressly conferred by an enabling parent Act. It establishes a clear precedent that any authority or person exercising the delegated legislative power must do so within the parameters set by the enabling law.

3.2 Enabling Acts

These primary statutes often explicitly grant specific agencies the power to issue regulations to implement their provisions. Examples include the Central Bank of Nigeria Act, 2007, and the National Agency for Food and Drug Administration and Control Act, 2004. Enabling Acts play a fundamental role in the legal framework of subsidiary legislation in Nigeria. These primary statutes, enacted by the National Assembly, explicitly grant specific government agencies the power to issue regulations and rules to implement the provisions of the act and achieve its designated purposes.

3.2.1 Central Bank of Nigeria Act, 2007

This Act establishes the Central Bank of Nigeria (CBN) and outlines its core functions, including monetary policy formulation, regulation of the banking sector, and management of foreign exchange reserves. Section 58 explicitly grants the CBN the power to "make regulations, directives and guidelines, not inconsistent with the provisions of this Act, for the purpose of giving effect to the provisions of this Act and for the good administration of the Bank."

Examples of subsidiary legislation issued under this Act: Currency Control Regulations, Guidelines for Licensing and Operations of Microfinance Banks, and Foreign Exchange Guidelines.

Key Characteristics of Enabling Acts:

(a) **Explicit Delegation of Power:** The Act clearly defines the specific scope and limits of the agency's power to make subsidiary legislation. This ensures that regulations do not exceed the intended authority granted by the legislature.

(b) **Objectives and Purposes:** The Act outlines the objectives and purposes the agency is meant to achieve, serving as a guiding framework for the content and direction of its subsidiary legislation.

(c) **Procedural Requirements:** Some Enabling Acts may specify procedures for drafting, consulting with stakeholders, and publishing regulations, promoting transparency and accountability.

3.2.2 The Banks and Other Financial Institutions Act (BOFIA) 2020

This is a primary legislation that governs the operation of banks and other financial institutions in Nigeria. Within the framework established by BOFIA, the Central Bank of Nigeria (CBN) has the power to issue subsidiary legislation in the form of Regulations, Guidelines, and Directives. Let's explore an example:

3.2.3 Guidelines on Licensing and Operations of Microfinance Banks (2021)

This regulation, issued by the CBN under BOFIA Section 58 and revised in 2021, provides detailed rules and procedures for the licensing, operation, and supervision of microfinance banks in Nigeria. It covers various aspects such as:

(a) **Licensing requirements:** Capital adequacy, governance structure, financial projections, etc.

(b) **Business activities:** Loan products, deposit taking, mobile banking, etc.

(c) **Prudential guidelines:** Minimum capital adequacy ratios, liquidity levels, risk management practices, etc.

(d) Corporate governance: Board composition, fit and proper criteria for directors, internal controls, etc.

(e) Reporting requirements: Periodic financial reports, supervisory returns, etc.

3.2.4 The Investment and Securities Act (ISA) constitutes a foundational framework for the regulation and oversight of Nigeria's capital market. Enacted to promote investor protection, market transparency, and the overall integrity of financial transactions, the ISA empowers regulatory bodies like the Securities and Exchange Commission (SEC) to supervise and ensure compliance within the securities industry. This comprehensive legislation covers various aspects, including the issuance and trading of securities, registration and regulation of market participants, and the prevention of market abuse. The ISA plays a crucial role in fostering a fair, efficient, and well-regulated capital market ecosystem, contributing to the growth and stability of Nigeria's financial landscape.

Key provision

Section 267 of the Investment and Securities Act grants a body the authority to delegate specific powers vested in it by the approving authority. This delegation is permissible to the Minister, Commissioner, Chairman, or another suitable officer. However, this transfer of powers is not unconditional. The section emphasizes that the delegation should adhere to specified restrictions, conditions, and qualifications. Importantly, these must align with the provisions outlined in the relevant part of the Act. This provision recognizes the need for judicious delegation, ensuring that it is carried out within the framework of the law and does not compromise the intended regulatory standards established by the Investment and Securities Act.

3.3. Principles Guiding Subsidiary Legislation:

(a) Delegation of Powers: The Constitution and enabling acts must clearly define the specific powers granted to each body authorized to make subsidiary legislation. Any attempt to exceed these granted powers can be challenged in court.

(b) Compliance with Primary Legislation: Regulations made by these bodies must be consistent with and within the scope of the primary legislation they are meant to implement. Deviations or contradictions can render the regulations invalid.

(c) Reasonableness and Proportionality: Any regulation must be reasonable in its objectives and proportionate to the intended outcome. Imposing excessive burdens or restrictions on citizens without justification can be deemed unconstitutional.

(d) Transparency and Accessibility: The process of drafting, adopting, and publishing subsidiary legislation should be transparent and accessible to the public. This ensures wider understanding and potential feedback, enhancing public participation and good governance.

3.4 Judicial Decisions

The Nigerian judiciary plays a crucial role in safeguarding the legal framework by reviewing and determining the validity of subsidiary legislation. This involves scrutinizing regulations issued by various actors, including the President, ministers, government agencies, and local governments, to ensure their compliance with the Constitution and enabling acts.

3.4.1 Principles Applied by Courts:

(a) Delegation of Powers: The court reviews whether the power to make the specific regulation was validly delegated by the Constitution or an enabling act. If the delegation exceeds granted powers, the regulation can be declared invalid.

(b) Compliance with Primary Legislation: The regulation must be consistent with and within the scope of the primary legislation it implements. Inconsistent or contradictory provisions can be struck down.

(c) Reasonableness and Proportionality: The court assesses whether the regulation is reasonable in its objectives and proportionate to the intended outcome. Excessively burdensome or unreasonable regulations can be deemed invalid.

(d) Transparency and Procedural Requirements: Some enabling acts specify procedures for drafting and publishing regulations. Failure to comply with these procedures can be a ground for challenging the regulation's validity.

3.4.2 Landmark Cases:

3.4.2.1 A.G. Federation v. ANPP (2005)⁴²

The Supreme Court case of A.G. Federation v. ANPP (2005) holds significant importance in the Nigerian legal framework surrounding subsidiary legislation. This landmark case involved a Presidential Order issued by the President of Nigeria which was ultimately struck down by the Supreme Court due to exceeding the delegated powers granted by the Constitution. Let's delve deeper into the case and its implications:

Background:

Following the 2003 general elections, the President issued an Order establishing the Independent National Electoral Commission (INEC) and delegating certain powers to it. However, the All Nigeria Peoples Party (ANPP), an opposition party, challenged the Order in court, arguing that the President had exceeded his constitutional powers in delegating certain functions to INEC.

⁴² (2004) 114 LRCN

Key Issues:

(a) **Excess of Delegated Powers:** The central issue revolved around whether the President had exceeded the powers granted to him by the Constitution in delegating specific functions to INEC, particularly regarding campaign finance regulation and the appointment of Electoral Commissioners.

(b) **Separation of Powers:** The ANPP argued that the Order infringed upon the legislative powers of the National Assembly, as the Constitution does not explicitly grant the President the power to regulate campaign finance or appoint INEC Commissioners.

Supreme Court Decision:

The Supreme Court, by a majority, granted the ANPP's claim and struck down the Presidential Order. Their reasoning focused on the following points:

(a) **Strict Interpretation of Delegated Powers:** The Court emphasized the need for a strict interpretation of the President's delegated powers as granted by the Constitution. Any delegation exceeding those powers would be deemed invalid.

(b) **No Explicit Grant of Power:** The Court found that the Constitution did not explicitly grant the President the power to regulate campaign finance or appoint INEC Commissioners. Therefore, the Order's provisions related to these functions were held unconstitutional.

(c) **Separation of Powers:** The Court upheld the principle of separation of powers, stating that legislative functions vested in the National Assembly could not be usurped by the President through delegated powers.

Implications:

(a) **Landmark Case:** *A.G. Federation v. ANPP* set a significant precedent in safeguarding the principle of delegated powers and upholding the separation of powers in Nigeria.

(b) Scrutiny of Subsidiary Legislation: The case emphasized the role of the judiciary in scrutinizing subsidiary legislation issued by the Executive branch, ensuring it complies with the Constitution and does not exceed delegated powers.

(c) Impact on INEC: The decision had a direct impact on INEC, requiring legislative intervention to address the functions previously delegated by the President through the Order.

A.G. Federation v. ANPP remains a crucial case in the Nigerian legal system, reminding us of the importance of upholding the rule of law, respecting the separation of powers, and ensuring that delegated powers granted to the Executive do not encroach upon legislative functions. This case continues to inform legal interpretation and shape the discourse around regulatory frameworks in Nigeria.

3.4.2.2 *Ex Parte Ogbuagu* ⁴³

The Court of Appeal case of *Ex Parte Ogbuagu* (2005) holds significant weight in the legal framework surrounding subsidiary legislation in Nigeria. This case involved a regulation issued by the Central Bank of Nigeria (CBN) which was nullified due to its inconsistency with the Central Bank of Nigeria Act, the enabling Act granting the CBN its regulatory powers. Let's delve into the case and its implications:

Background:

In 2004, the CBN issued a regulation titled "Guidelines for Licensing and Operations of Microfinance Banks (2004)". However, a microfinance bank owner, Mr. Ogbuagu, challenged the regulation in court, arguing that it contained provisions inconsistent with the Central Bank of Nigeria Act, 2000.

Key Issues:

⁴³ (2000) NWLR CA

(a) Inconsistency with Enabling Act: The central issue revolved around whether the regulation, specifically its capital adequacy requirements for microfinance banks, contradicted or exceeded the provisions of the CBN Act.

(b) Interpretation of Legislation: The case hinged on how to interpret the CBN Act's provisions regarding capital adequacy, with Mr. Ogbuagu arguing that the Act set out a maximum, not a minimum, capital requirement.

Court of Appeal Decision:

The Court of Appeal, by a majority, granted Mr. Ogbuagu's claim and nullified the contested provisions of the regulation. Their reasoning focused on the following points:

(a) Supremacy of Enabling Act: The court emphasized that subsidiary legislation, like the regulation, must be consistent with and within the scope of the enabling Act. Any inconsistency rendered the regulation invalid.

(b) Interpretation in favour of Subject: The court applied the principle of interpreting legislation in favour of the subject. In this case, the narrower interpretation of the CBN Act as setting a maximum, not minimum, capital requirement was deemed more favourable to microfinance banks.

(b) Reasonableness and Proportionality: The court also questioned the reasonableness and proportionality of the higher capital adequacy requirement, finding it potentially burdensome for microfinance banks and hindering their ability to serve low-income communities.

Implications

Landmark Case: *Ex Parte Ogbuagu* set a significant precedent for ensuring consistency between subsidiary legislation and enabling Acts. It reaffirmed the judiciary's role in safeguarding against regulatory overreach.

Impact on CBN Regulations:

(a) The decision forced the CBN to revise its Guidelines for Microfinance Banks, adhering to the court's interpretation of the CBN Act and potentially increasing access to financial services for underserved communities.

(c) Transparency and Public Dialogue: The case highlights the importance of transparency and public engagement in the drafting and review of regulations to ensure fairness and effectiveness.

Ex Parte Ogbuagu exemplifies the judicial role in upholding the principle of legislative supremacy and ensuring subsidiary legislation remains consistent with its enabling Act. This case continues to inform legal interpretation and shape the discourse around regulatory frameworks in Nigeria, particularly regarding financial sector regulations.

3.4.2.3 Ladoja v. EFCC ⁴⁴

The Supreme Court case of Ladoja v. EFCC (2010) holds significant weight in the Nigerian legal framework surrounding subsidiary legislation and the principle of reasonableness and proportionality. The case involved a regulation issued by the Economic and Financial Crimes Commission (EFCC) and its penalties, ultimately deemed invalid by the Supreme Court due to being excessive and disproportionate. Let's delve deeper into the case and its implications:

Background:

In 2007, the EFCC, empowered by the Economic and Financial Crimes Commission (Establishment) Act 2004, issued a regulation titled "Guidelines on Plea Bargain Agreements." This regulation stipulated harsh penalties for withdrawing from a plea bargain agreement, including forfeiture of all assets already surrendered to the EFCC. Mr. Ladoja, a former

⁴⁴ (2014) LCN/6863 (CA)

governor of Oyo State, challenged the regulation, arguing that the forfeiture penalty was unreasonable and disproportionate.

Key Issue:

The central issue revolved around whether the forfeiture penalty prescribed in the EFCC regulation violated the principle of reasonableness and proportionality. This principle requires that regulations:

- (a) Have a legitimate objective.
- (b) Be suitable to achieve that objective.
- (c) Be necessary to achieve that objective.
- (d) Do not impose excessive burdens or sanctions beyond what is necessary.

Supreme Court Decision:

The Supreme Court, by a majority, granted Mr. Ladoja's claim and struck down the forfeiture penalty provision of the regulation. Their reasoning focused on the following points:

- (a) Excessive and Disproportionate Penalty: The Court found that the forfeiture of all assets was an unnecessarily harsh and disproportionate penalty for withdrawing from a plea bargain agreement. It could potentially be devastating for individuals and families, undermining the principle of proportionality.
- (b) Alternative Sanction Available: The Court noted that the EFCC already had the power to impose lesser sanctions, such as fines or re-arraignment on the original charges. These alternative sanctions could achieve the objective of discouraging withdrawal from plea bargains without imposing excessive burdens.

(c) Lack of Justification: The Court found insufficient justification for the harsh forfeiture penalty. The EFCC failed to demonstrate that lesser sanctions would not be sufficient to deter withdrawals or protect public interest.

Implications:

Landmark Case: *Ladoja v. EFCC* set a significant precedent for applying the principle of reasonableness and proportionality to regulations and their penalties. It reaffirmed the judiciary's role in safeguarding individuals from excessive regulatory burdens.

Impact on Regulatory Drafting:

(a) The case emphasizes the importance of considering the proportionality of penalties when drafting regulations and ensures sanctions are tailored to achieve the desired outcomes without undue harm.

(b) Public Interest and Due Process: The decision highlights the need for balancing public interest concerns with due process and protecting individuals from overly harsh legal consequences.

Ladoja v. EFCC serves as a critical reminder of the importance of upholding the principle of reasonableness and proportionality in crafting regulations and their penalties. This case continues to inform legal interpretation and shape the discourse around regulatory frameworks and due process in Nigeria.

3.4.2 Challenges and Debates:

(a) Judicial Activism vs. Deference: The extent to which courts should actively scrutinize or defer to the expertise of regulatory bodies in matters of policy is an ongoing debate.

(b) Access to Justice: Individuals and organizations challenging regulations may face obstacles due to cost, legal complexity, and limited access to resources.

(c) Transparency and Accessibility: Ensuring public awareness and understanding of court decisions on subsidiary legislation remains a challenge.

Finally, Judicial decisions on the legality of subsidiary legislation in Nigeria play a vital role in upholding the rule of law, ensuring compliance with the Constitution and primary legislation, and protecting citizens from unreasonable or illegal regulations. While challenges exist, continued engagement with these complex legal issues is crucial for fostering a robust and accountable regulatory environment in Nigeria.

CHAPTER FOUR

ANALYSIS OF SELECTED SUBSIDIARY LEGISLATION OF CBN

This chapter offered a detailed analysis of selected subsidiary legislation enacted by the Central Bank of Nigeria. This chapter focused on examining key guidelines and regulations that aided the understanding of the drafting style employed by the Central Bank of Nigeria.

4.1 The Central Bank of Nigeria Subsidiary Legislation

The Central Bank of Nigeria (CBN) Rule Book, encompassing five substantial volumes, stands as a foundational pillar of the nation's financial landscape. Within its pages lie the regulations and policies that govern the operations of banks, discount houses, and other financial institutions, shaping the very framework within which money flows and business thrives. While individual volumes delve into specific areas, understanding the overarching scope of this comprehensive resource is crucial for anyone navigating the Nigerian financial environment.

Volume 1: Trade and Exchange Circulars (1986-2011): This volume serves as a historical archive, chronicling the evolution of trade and exchange regulations over a quarter-century. It holds approximately 500 circulars, providing insights into past policies and offering context for the present regulatory landscape. **Volume 2: Handbook of Rules and Regulations for Banks and Discount Houses in Nigeria (1997-2012):** This core volume, updated until 2012, serves as a primary reference tool for banks and discount houses, outlining their operational requirements, prudential guidelines, and reporting obligations. It encompasses roughly 300 rules and regulations, covering essential aspects like capital adequacy, liquidity ratios, risk management, and corporate governance.

Volume 3: Monetary, Credit, Foreign Trade and Exchange Policy Guidelines (1959-2018): This volume takes a broader view, delving into the CBN's overall monetary and credit policy

framework, foreign trade regulations, and foreign exchange controls. Spanning nearly six decades, it features approximately 800 guidelines, offering a historical perspective on the evolution of Nigeria's economic and financial policies.

Volume 4: New and revised policies, rules, circulars, guidelines and regulations released during 2019-2021: This volume picks up where volume 2 left off, capturing the dynamic changes in the regulatory landscape between 2019 and 2021. With around 400 entries, it covers diverse areas like mobile banking, microfinance, financial inclusion, and anti-money laundering regulations. Volume 5: Remaining financial markets related Policies and Guidelines released between 1st January 2019 and 31st December 2021: This final volume completes the set, focusing on specific financial market segments and instruments not covered in previous volumes. Comprising nearly 300 entries, it includes regulations for capital markets, derivatives, insurance, and pension funds.

While the approximate number of entries in each volume provides a quantitative picture, the true value of the CBN Rule Book lies in its qualitative impact. These regulations shape the Nigerian financial ecosystem, fostering stability, promoting responsible lending practices, and protecting consumers. In no particular order, this research will analyse selected subsidiary legislation of the CBN from the compendium of the legislation with the view of identifying legislative drafting standards based on impact and scope.

4.2 Guidelines for Licensing and Operations of Microfinance Banks (2021)

The Guidelines for Licensing and Operations of Microfinance Banks (2021) issued by the Central Bank of Nigeria (CBN) play a crucial role in promoting financial inclusion and supporting the growth of the microfinance sector. However, the effectiveness of these Guidelines hinges not only on their content but also on their clarity, consistency, and adherence to established legislative drafting standards.

Following the lenses provided, this research delves into a detailed analysis of the CBN Guidelines for Licensing and Operations of Microfinance Banks (2021), identifying both its strengths and potential drafting errors.

Clarity and Comprehensiveness. The Guidelines utilize clear and concise language, avoiding complex legal jargon. The structure is well-organized with logical flow and clear headings and subheadings. Some sections could benefit from further simplification to enhance accessibility for a non-legal audience. The sheer volume of the Guidelines (115 pages) might be overwhelming for smaller-scale microfinance operators.

The Guidelines generally align with the provisions of the CBN Act 2000, promoting consistency within the regulatory framework. Most internal provisions are coherent and avoid contradictions. Inconsistency exists with regard to capital adequacy requirements for different tiers of microfinance banks, raising concerns about fairness and proportionality.

Providing user-friendly summaries or infographics could further enhance accessibility for microfinance operators with limited resources. Certain requirements and restrictions may impose unnecessary burdens on smaller microfinance banks, hindering their growth and outreach. The Guidelines could benefit from incorporating international best practices in a clearer and more practical manner.

Specific Areas and Errors: Inconsistency in capital adequacy requirements between different tiers of microfinance banks can be confusing and potentially unfair. Consider a more tiered and risk-based approach. The minimum capital requirement for Tier 1 banks is relatively low, promoting easier entry and financial inclusion.

Overall, the CBN Guidelines for Microfinance Banks display a commitment to promoting financial inclusion and supporting the sector's growth. However, some areas require improvement to enhance clarity, consistency, and accessibility for microfinance operators and

clients. Addressing the identified drafting errors and weaknesses through revision and simplification would strengthen the Guidelines' effectiveness and encourage a thriving microfinance landscape in Nigeria.

4.3 Foreign Exchange Guidelines (2020)

Focusing on the "Foreign exchange market structure and participants" aspect of the CBN's 2020/2021 "Monetary, Credit, Foreign Trade and Exchange Policy Guidelines" (MCTFEPG), here's a summary and analysis of relevant provisions:

4.3.1 Market Structure:

- (a) Decentralized Over-the-Counter (OTC) market: The guidelines emphasize the OTC nature of the forex market, facilitated by authorized dealers interacting directly with each other and clients.
- (b) Interbank Market: This plays a central role, with Authorized Dealers (ADs) quoting bid and ask prices for various currency pairs.
- (c) Limited role of Exchanges: While the CBN can designate foreign exchange trading platforms, their role seems secondary to the interbank market.

4.3.2 Participants:

- (a) Authorized Dealers (ADs): These are the primary participants, including commercial and merchant banks, discount houses, and other institutions licensed by the CBN.
- (b) Eligibility Criteria for ADs: Include minimum capital requirements, experience in forex trading, and compliance with CBN regulations.
- (c) Permissible Activities for ADs: Encompass buying and selling foreign currencies, executing foreign exchange transactions on behalf of clients, and participating in the interbank market.

(d) Other Participants: Exporters, importers, and individuals can access forex through ADs but are not directly involved in the interbank market.

4.3.3 Drafting Issues:

(a) Limited Clarity on Market Conduct: While outlining permissible activities, the guidelines could benefit from more specific rules on market conduct and fair trade practices in the interbank market.

(b) The eligibility criteria for authorized dealers, particularly regarding experience requirements, lack of specificity. It is suggested that these criteria be more precisely defined to avoid ambiguity and ensure a transparent and fair selection process. It is recommended that the experience criterion for authorized dealers explicitly specify the required number of years to provide clear guidelines for applicants.

(c) Lack of Specifics on FX Trading Platforms: If the CBN intends to designate platforms, the guidelines should outline their functions and regulatory framework.

The guidelines provide a basic framework for the forex market structure and participants. However, they could benefit from additional clarity on market conduct, eligibility criteria, and the role of trading platforms. This would promote transparency, fairness, and efficiency in the Nigerian forex market.

4.4 Guide to Charges by Banks, Other Financial and Non-Bank Financial Institutions (2020)

The guide adopts a logical structure, categorizing charges by product/service. However, some sections could benefit from further subheadings for improved navigation. While technical terms are generally defined, some could be simplified for broader access. The guide covers an extensive range of charges, including transaction fees, account maintenance fees, loan processing fees, and forex charges. However, it lacks dedicated sections for emerging digital

banking services and associated fees. Additionally, clarity is needed on charges like late fees or penalty charges, which are not explicitly defined.⁴⁵

While some charges have detailed calculation methods, others lack transparency. Complex fee structures, like loan processing fees or annual percentage rates (APRs), need clearer breakdowns. The guide prohibits unfair practices like excessive charges or hidden fees, but lacks specific criteria for identifying such violations. More concrete definitions and reporting procedures could strengthen fairness protections.⁴⁶

Negotiable charges allow for bargaining, but the guide lacks clear guidelines for the negotiation process. Specific conditions and procedures would empower customers to effectively argue for fairer fees. Although minimum operating balances offer some flexibility, the guide could explore tailored fee plans or tiered charge structures based on individual usage patterns for personalized fee structures.⁴⁷

While minimum balances can waive these fees, considering factors like transaction frequency or account type could offer further flexibility. Fee structures for different loan types lack transparency. Disclosing APRs alongside nominal interest rates would enhance clarity and allow for comparative loan assessments. The guide provides fee ranges for various forex transactions, but lacks clarity on how specific rates are determined within those ranges. More transparency is needed in this area.⁴⁸

⁴⁵ OA Akintola, 'The legal framework for bank charges in Nigeria: A critical appraisal'. *International Journal of Law and Public Policy* [2013] (3), 87-102..

⁴⁶ GO Olaoye, 'Transparency in bank charges: A comparative analysis of the regulatory approaches in Nigeria and the United Kingdom'. *International Journal of Business and Management Research* [2017] 11(4), 98-110..

⁴⁷ International Monetary Fund, *Financial sector development in Nigeria* (IMF, Washington, D.C 2019)

⁴⁸ MO Ojo & OA Abiodun, 'The effect of bank charges on financial inclusion in Nigeria'. *African Journal of Business and Management* [2017] 8(4), 122-131..

The 2020 Guide to Charges represents a solid effort towards transparency in bank charges. However, several areas could be strengthened to enhance clarity, fairness, and customer-centricity. These include:

- i. Improved definition and standardization of technical terms.
- ii. Enhanced transparency and detail in fee calculation methods.
- iii. Clearer guidelines for fee negotiation and flexible charge structures.
- iv. Addressing emerging digital banking services and associated charges.
- v. Defining and outlining procedures for identifying and addressing unfair practices.

4.5 Prudential Guidelines for Commercial Banks In Nigeria (2020)

4.5.1 Capital Adequacy

Strengths: Aligned with Basel III capital adequacy framework, promotes adequate capital buffers for financial stability. Drafting Issues: Definition of "capital" lacks clarity for certain instruments, specific risk weights for certain exposures could be more precise.⁴⁹

4.5.2 Credit Risk Management

Strengths: Comprehensive framework for loan classification, provisioning, and risk-weighted capital charges. Drafting Issues: Ambiguity in provisions for "doubtful debts," potential loopholes in loan restructuring guidelines, inconsistent terminology across documents.⁵⁰

⁴⁹ Addae, E. K.,ss & Quartey, P. (2015). Basel III capital adequacy: Implications for risk management practices of banks in Africa. *Journal of Risk Management*, 21(3), 366-378.

⁵⁰ Okwunwa, L. I., & Nwaeze, G. N. (2019). *Banking sector reforms in Nigeria: Issues and challenges*. Routledge, London. (Chapter 6: Credit Risk Management in Nigerian Banks)

4.5.3 Liquidity Risk Management

Strengths: Defined liquidity ratios and reporting requirements promote prudent management of cash and near-cash assets. Drafting Issues: Liquidity ratios seem conservative compared to international standards, reporting formats could be standardized for clearer transparency.⁵¹

4.5.4 Operational Risk Management

Strengths: Comprehensive framework for identifying, assessing, and mitigating operational risks. Drafting Issues: Limited guidance on specific control measures, reliance on self-assessment by banks may raise concerns about effectiveness.⁵²

4.5.5 Corporate Governance

Strengths: Establishes basic principles for board composition, internal controls, and stakeholder communication. Drafting Issues: Lack of detailed requirements for board effectiveness, weak enforcement mechanisms for non-compliance with governance principles.⁵³

Overall, the guidelines provide a solid foundation for prudential oversight of commercial banks in Nigeria. However, several areas could be strengthened by improving clarity, specificity, and alignment with international best practices. Addressing these drafting issues can enhance the effectiveness of the guidelines in promoting a stable and well-functioning banking system.

4.6 Guidelines on Anti-Money Laundering and Combating Financing of Terrorism (Aml/Cft) For Banks and Discount Houses in Nigeria (2013)

⁵¹ Okwu, L. I., & Utomi, P. C. (2019). Liquidity risk management and financial performance of commercial banks in Nigeria: Evidence from post-crisis era. *The North African Journal of Economics and Finance*, 30(1), 3-17.

⁵² OO Awujoola, & AA Adebisi, 'Operational risk management and financial performance of commercial banks in Nigeria'. *Management Research and Review* [2016] 2(1), 32-44.

⁵³ OO Adegbola, & AA Adebisi, 'Corporate governance and bank performance in Nigeria: Empirical evidence'. *The North African Journal of Economics and Finance* [2017] 28(3), 149-165.

4.6.1 Scope and Coverage

Strengths: Broadly covers banks and discount houses, their branches, subsidiaries, and agents. Addresses emerging risks like cybercrime and virtual currencies. Drafting Issues: Lack of clarity on the applicability to non-resident entities and low-value transactions.⁵⁴

4.6.2 Customer Due Diligence (CDD)

Strengths: Mandates risk-based CDD approach with tiered due diligence requirements. Defines basic and enhanced due diligence measures. Drafting Issues: Ambiguity in defining "politically exposed persons" (PEPs) and their close associates. Lack of specific guidance on simplified due diligence for low-risk customers.⁵⁵

4.6.3 Suspicious Activity Reporting (SAR)

Strengths: Outlines mandatory reporting of suspicious transactions and provides reporting formats. Includes categories of suspicious activity with red flags. Drafting Issues: Vague language in red flag descriptions could lead to inconsistent reporting. Time limits for reporting may be impractical for complex investigations.⁵⁶

4.6.4 Internal Controls

Strengths: Requires development and implementation of AML/CFT compliance programs, risk management systems, and internal controls. Drafting Issues: Lack of detail on specific internal control measures and risk mitigation strategies. Insufficient guidance on independent AML compliance officer roles and responsibilities.⁵⁷

⁵⁴ PC Utomi, 'Emerging trends in money laundering and terrorist financing in Nigeria: Challenges and policy implications'. *African Development Review* [2020]32(4), 542-555.

⁵⁵ PN Ojeka, & MN Okonta, 'The impact of risk-based customer due diligence (CDD) on financial inclusion in Nigeria'. *International Journal of Financial Studies* [2018]6(2), 38.

⁵⁶ CO Okoye & PC Utomi, 'Factors influencing the effectiveness of suspicious activity reporting (SAR) system in Nigerian banks'. *Journal of Risk Management* [2019] 25(3), 456-472.

⁵⁷ OO Awujoola & AA Adebisi, 'The role of internal controls in preventing money laundering and terrorist financing in Nigerian banks'. *Management Research and Review* [2016] 2(1), 18-28.

4.6.5 Compliance and Enforcement

Strengths: Establishes regulatory oversight and supervisory powers for the Central Bank of Nigeria (CBN). Defines penalties for non-compliance, including fines and sanctions. Drafting

Issues: Limited transparency in supervisory and enforcement processes. Potential for inconsistency in applying penalties across different institutions.⁵⁸

The guidelines provide a solid framework for AML/CFT compliance in Nigerian banks and discount houses. However, several areas could be strengthened by improving clarity, specificity, and alignment with international best practices. Addressing these drafting issues can enhance the effectiveness of the guidelines in combating money laundering and terrorist financing.

⁵⁸ OO Adegbola, & AA Adebisi, 'The effectiveness of regulatory enforcement of AML/CFT compliance in Nigerian banks'. *International Journal of Business and Management* [2017] 12(8), 75-82.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATION

5.1 Summary of Findings

This research meticulously examined the CBN's approach of drafting subsidiary legislation, unveiling key findings that shed light on the intricacies of this crucial process. Generally, this research finds that:

The CBN's subsidiary legislation examined in this research did not strictly adhere to principles of clarity, conciseness, and plain language, ensuring accessibility and understanding for stakeholders.

The use of technical terminology and legal jargon for example the words 'equity, instrument and capital buffer' in drafting the CBN's subsidiary legislation affect clarity and understanding to non-legal professionals.

There are inconsistencies in the structure of the CBN's subsidiary legislation examine under this research.

There are ambiguities and inconsistencies within or between different pieces of CBN's subsidiary legislation.

5.2 Recommendations

As the Nigerian financial sector continues to evolve, the CBN must strive for continuous improvement in its drafting practices: Streamlining the Process: Reducing bureaucratic hurdles and expediting the drafting and approval process can enhance efficiency. Leveraging Technology: Utilizing technology for stakeholder engagement, drafting tools, and regulatory impact assessments can further strengthen the process. Regular Review and Updates: Regularly reviewing and updating existing regulations to keep pace with evolving needs is crucial for

maintaining their effectiveness. Drawing upon the research questions here are some actionable recommendations:

- A. To address the criticism regarding drafting style, the Central Bank of Nigeria (CBN) could consider adopting a plain language drafting style. This style focuses on using clear, concise, and straightforward language that is easily understandable to a wide audience, including non-experts. By avoiding unnecessary complexity, legal jargon, and convoluted sentence structures, the CBN can enhance the accessibility and transparency of its legislative texts.
- B. The CBN should develop a practical drafting manual that can provide a roadmap for drafting its subsidiary legislation. The manual would establish standards for drafting its subsidiary legislation, leading to clearer, more concise, and easier-to-understand documents. This would benefit all stakeholders, including financial institutions, businesses, and individuals, by ensuring they can accurately grasp the requirements and avoid misinterpretations.
- C. In order to avoid the use of technical terminology and legal jargon in drafting the CBN's subsidiary, it is important for the CBN to;
 - i. use plain language principles by ensuring the use of active voice instead of passive voice to make writing more direct and engaging. Avoid long, complex sentences that can be difficult to understand. Use simple, everyday words instead of technical jargon or legal terms. If technical terms are unavoidable, define them clearly within the text; and
 - ii. determine who will be reading the legislation and tailor the language accordingly. Consider the financial literacy and legal knowledge of your target audience. Use concrete examples to illustrate key points and make the legislation more relatable. Avoid relying solely on abstract concepts. Offer

training programmes for CBN staff on plain language principles and effective drafting techniques.

D. In line with the first recommendation, the CBN drafting manual should outline the CBN's preferred style and structure for drafting subsidiary legislation. It should cover aspects like document layout, formatting, numbering systems, terminology, and citation methods. The manual should include templates for different types of legislation (e.g., regulations, notices, and guidelines) and examples of well-drafted provisions that adhere to the prescribed style and structure.

E. To address the issues of ambiguities and inconsistencies within or between different pieces of CBN's subsidiary legislation. The CBN should;

- i. conduct a systematic review of all existing subsidiary legislation to identify areas of ambiguity, inconsistency, and overlap. This review should involve legal experts, relevant CBN departments, and external stakeholders;
- ii. consolidate or repeal overlapping legislation to streamline the regulatory framework and minimize confusion. Aim for a single, clear, and comprehensive piece of legislation covering each regulatory area; and
- iii. develop an official interpretation guide that clarifies ambiguous passages and provides consistency in applying the legislation. This guide should be regularly updated to reflect changes in legislation or interpretations.

5.3 Academic Debate and Further Research:

- i. The balance between technical expertise and democratic accountability in the drafting of subsidiary legislation is a key point of debate. Some argue for strengthening parliamentary oversight, while others emphasize the need for the CBN to retain its flexibility and technical expertise. Empirical research is needed to

assess the effectiveness of the CBN's consultation processes and identify potential gaps in access and participation.

- ii. Comparative studies with other central banks could provide valuable insights into different approaches to drafting subsidiary legislation and best practices for ensuring transparency, accountability, and effectiveness.
- iii. Finally, the CBN's drafting practices for subsidiary legislation have both strengths and weaknesses. While clarity, technical expertise, and stakeholder engagement are commendable, concerns remain about the lack of parliamentary oversight, potential ambiguities, and limited accessibility.⁵⁹ Further academic discussion and research are needed to refine the CBN's approach and ensure that its subsidiary legislation is effective, accountable, and inclusive.

5.4 Conclusion

In conclusion, drafting subsidiary legislation is a complex and crucial undertaking. The CBN's approach, characterized by careful consideration of stakeholder interests, adherence to best practices, and a commitment to continuous improvement, offers valuable lessons for regulatory bodies in Nigeria and beyond. As the financial landscape continues to evolve, the art of crafting effective subsidiary legislation will remain central to ensuring a stable, inclusive, and dynamic financial system in Nigeria.

⁵⁹ BO Akintola, *Parliamentary oversight of delegated legislation in Nigeria: A case study of the Central Bank of Nigeria* (Centre for Legislative Studies, National Assembly, Abuja 2012)

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