

Legal Response to Banking Malpractices in Nigeria

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Abstract

Malpractices have over time been prevalent in the Nations' banking industry. Malpractices are those Practices which are not only contrary to the ethics of the banking profession, but that also constitute infringements of various banking laws and regulations. This paper discusses the various malpractices common to the Nigerian banking industry and the ways the laws had combated these.

Key words: Legal control, Banking malpractices, Nigeria

1. Introduction

The banking industry constitutes one of the pillars on which the economy of any nation can be erected. The banking sector is the grease that lubricates the economic machine of any nation. One thing is however certain, when the banking industry sneezes, the entire nation catches cold. The attitude or adroitness of a nation's banking sector plays a significant part in its balance of payments fortunes or misfortunes. It is in view of all these that the maintenance of the integrity of the banking sector should be of great concern to any government and indeed the international community. This is why this paper campaigns against malpractices in the banking industry.

Although criminal acts and other malpractices are not peculiar to the banking sector alone, indeed what is commonly referred to as "white collar" criminality permeates all facets of commercial activities. One must hasten to add that the greatest manifestation of "white collar" criminality is in the banking or bank related activities. In any case, the chain of criminal exploits is hardly ever completed without the involvement of the banking sector. The thrust of this paper is to discuss the problem of malpractices in the Nigerian banking industry and examine how the laws have been able to combat these; appropriate recommendations would also be made.

1.1. Malpractices in the Banking Industry

Malpractices can be divided into three broad categories namely:¹

- (a) Malpractices by Bank Employees,
- (b) Malpractices by Non – Employees of the Banks and
- (c) Malpractices by Banks themselves

2. Malpractices by Bank Employees

Bank employees malpractices are mainly practices perpetrated by bank employees against interests of their banks/employers or the customers of the banks, solely for the benefits of themselves (the employees), or for the joint benefits of themselves and their outside collaborators, such malpractices include stealing of bank's monies, stealing of customers monies, falsification of accounts and forgery of bank papers for the purposes of stealing or in order to corruptly enrich themselves, or deliberately breaching banking rules to make money for themselves or for such other reasons.

2.1. Stealing of Bank's Monies²:

This includes stealing by customers, stealing from cashiers by other employees, and stealing by other employees of higher rank, up to the managerial level. This type of stealing may be committed by cashiers from their daily receipts, or it can be committed by other employees who steal from monies in the custody of cashiers, who may be momentarily absent from their cages without locking them up. While managerial stealing may be committed in so many ways, including stealing money from the strong-room, money with forged currency roles.³

However, the most baneful of this act of theft is now done by fraudulent transfers of bank funds from one bank to the other. Such fraudulent transfers are now considerably aided by the use of telexes and computers.⁴

¹ Adedokun Adeyemi,(1990) "Malpractices in the Banking Industry"; in *Banking and Other Financial Malpractices in Nigeria, Fed. Ministry of Justice Law Review Series*, p.14

² Adedokun Adeyemi Op.cit.

³ See *Aeroflot(Soviet Airlines) V United Bank for Africa* (1986) 3 NWLR 188

⁴ See Adedokun Adeyemi, (1989) "Malpractices in the Banking Industry"; Being a paper presented at the Seminar on Banking and Other Financial Malpractices, held

This practice usually involves collusion by employees, of, at least, two banks. An example of this practice is that a certain amount of money goes out from Bank A, requesting Bank B to transfer a certain amount of money from a customer X's account in Bank B, on the purported authority of customer X. Everything about the procedures of the exchanges between the two banks is regular except the fact that customer X never requested for the transfer of money to Bank A in the first place. Often times, a forged request form or letter is prepared to authenticate the basis for the action in Bank A. Bank B then responds eventually by effecting the transfer of the requested amount to Bank A. The culprit thereafter effects a fake payment to customer X, through the clearance of a forged cheque or through the transfer of the funds to yet another bank, Bank C, again supported by false documentation. The money is then taken out' from Bank C. On the completion of the operation, the documents are then made to disappear from the coffers of Bank A, and possible also, from those of one or both of Banks B. & C. An actual, usually impecunious, "customer X", or an outsider, posing as customer X, may be involved in the fraudulent transfer operations. Such Inter-bank fraudulent transfers are now becoming frequent in the area of international transfers, involving foreign exchange transfers, which are now resulting, not only in losses to Nigerian banks in Naira, but also losses to the country in relation to its foreign exchange holdings, quite apart from the fact that it is adding to an already bad international reputation for the country.

2.2. Defalcation: - Defalcation of customer's deposits either by conversion or fraudulent alteration of deposit vouchers by either the bank cashier or customer's agent is another form of fraud. The case of *Lippit v Ashley*¹ centered on an action by a receiver against directors of a bank that failed as a result of defalcation by its treasurer. Where the bank cashier and customer's representative collude to defalcate, such frauds are usually neatly perpetrated and take longer time to uncover. They are in most cases discovered by customers during reconciliation of their bank statements.

2.3. Stealing of Customers Monies²:- This can be through simple or complicated methods. Instance of simple methods may be where a customer pays money into a bank and the cashier counting the money drops some money into his till from a packet, and then claims that the packet of, say N2, 000 in N20 notes, is short by about fifteen pieces that is by N300.00. The unsuspecting customer then begins to doubt in his own calculation or counting, or honesty of his staff or members of his family who assisted him in counting the money. The reverse situation may again occur in the case of withdrawal of money by a regular customer who believes in the honesty and/ or infallibility of banking staff or one who is in a hurry. Here the cashier may short-count the money. Once the customer fails to count the money immediately in receipt of the money in the presence and in full view of the cashier, he himself will hardly be able to come back to claim the short fall successfully from the cashier of the bank. Sometimes the situation occurs in the course of the payment of large sums to big customers, usually companies, government departments or parastatals, where some few packets may have minor shortfalls, like one N20 out of N2, 000 packets of N20 notes.

The complicated instances may range from fraudulent intra-bank crediting and debiting of respective customer's accounts, with a view to transferring money from one account to the other form. Which arrangements have been made to take money out, to the procedures of fraudulent inter-bank transfers discussed earlier, with the difference that the objectives is to get at money kept in a customer's account. The same way may also be achieved through the passage of a forged cheque which, more often than not, usually involves collusion with non-banking officials, like the staff of the customer whose cheque is forged.

2.4 Falsification of Accounts and Forgeries for Stealing purposes³:- For instance, customer A, who has very little funds in his account, approaches or is approached by staff X of the bank. They agree that a certain amount, say about NI00, 000 be transferred from an account of customer B, which has a balance of N789, 000. The purpose of the withdrawal is to use the money for some business. After the business they hope to return the NI00, 000 to customer B's account, and split the profit. During the period of transaction, arrangement is usually made to prevent the Statement of Account from being sent to customer B, or fake ones, not reflecting the withdrawal, are usually arranged to be sent to him. The withdrawal itself is reflected as follows: The ledger of customer B's account is simply debited to the tune of NI00, 000, whilst customer A's account is simultaneously credited to the tune of NI00, 000 the same day. At the close of banking transactions for the day the bank records a balanced account. A few days later, customer A gives an order for transfer of the NI00, 000 to another bank, or he instructs the bank to prepare a draft to the tune of NI00,000. The money now available in the case of customer A's used for whatever business contemplated. At the end of it, customer A pays NI00,000 back into his account.

at the Institute of International affairs, Victoria Island, Lagos, 24-26 April

¹ 94^A, 995 (Comm. 1915)

² Op. Cit., p.16

³ Adedokun Adeyemi Op.cit. pp .16-17

That very day or some days later, his account is debited, through an entry on his account ledger, to the tune of NI00,000 whilst the account of customer B is credited to the tune of NI00,000, that very same day. Again, at the close of banking transactions on that day, the bank again achieves a balanced account. The debiting and crediting and the subsequent reversals, are simply explained off as machine or computer errors.

2.5. Corruption

There are two broad categories of corruption among banking officials namely:-

- (a) Corruption involving falsification of accounts and other documents.
- (b) Corruption involving breaches of banking rules.

In either case it is with the view to highly placed banking officials rewarding themselves, their wives, relations, girl-friends, friends or some other persons in position of authority. Quite apart from falsifying accounts and other documents for purposes of stealing money from the banks or their customers, bank officials also use the same methods for other fraudulent purposes. For example, in order to back up illegal transfer of foreign exchange, bank officials, in collusion with custom officials and the Nigerian Ports Authority officials, conspire with certain customers to prepare letters of credit for unimported goods, or for an amount considerably than (may be ten times) the actual amount of goods actually ordered and imported into the country. All banking documents, customs documents and the Ports Authority documents are false or entirely fake.

In the case of *UBA Ltd. v. Ibhafidon*¹ a Nigerian Case. The appellant gave some money to a man in the presence of the bank official. This money was not in order to purchase some foreign exchange from the man's domiciliary account. The bank asked him to return the next day to collect the money. On getting to the bank he was informed that he could not collect the money as there were insufficient funds in the man's account and that the funds in the account were from a forged cheque. This was in contravention of Foreign Currency (Domiciliary Account) Act of 1986, which forbids transactions in foreign exchange other than with an unauthorized dealer. The court upheld this and said all transactions involving foreign exchange are to be done in accordance with the existing laws; any transactions in breach of these laws are illegal. In the case of non-observance of rules this related largely to areas of loans, there, for a particular percentage share of the loan, the manager may decide to grant a loan exceeding his authority, without reference to the appropriate headquarters for approval. Again he may even grant the loan without adequate *or*, even any collateral at all. Also there are instances of bank managers granting unlimited overdraft facilities to their wives, girl friends, relations or other friends, to trade with, or without any collateral at all.

Other malpractices by bank staff include suppression of cheques in clearing, interception of telex messages meant for transfer of funds under international commercial, and other transactions with the object of diverting the proceeds into their own foreign accounts²

3. Malpractice by Non-Employee of Banks³

These categories of persons also, engage or participate in the commission of these crimes. The area which the Nigerian banks now watch out for is the area of computer transfer. Banks and law enforcement authorities at present do not know enough about the incidence of computer frauds in practice. Through the use of computer terminal at one branch of a bank or the other, the sort of fraudulent transfers discussed above are now more readily facilitated by computer, whereby it is now possible for a branch to lock in into the computer control database or of another branch (or even from one bank computer to another bank's computer) and programme that other branch's or banks computer to transfer money from the account(s) into designated account(s) at the originating bank branch or elsewhere. Hence the banks need adequate training for their staff about building a lot of security checks into their computer systems, and carefully guarding same. This will involve letting the general staff have access only to the routine of the packaging system, whilst the secret codes for the security checks/guards should be known only to the managing director and one or two of his top, aides' or to the computer operations top cadre (not more than two or three in number). Such people must have bear full responsibility for computer operations in their banks.

They should, of course periodically test their systems for security leakages, and change their code's where leakages have been discovered or suspected. It is essential and urgent for our banks to take sewing precautions in this area, bearing in mind that computers now operate via satellite, so telecommunications transmissions have demonstrated. The implication of this is that a very competent foreign resident computer scientist can induce transfer of frauds from any of our banks via satellite at will, unless adequate care is taken. The prospects of this must be quite frightful for a developing country like Nigeria.

Also, it is common knowledge that confidence tricksters, fake business men and women, as well as

¹ (1994) 4 NWLR (PT 318) p.91.

² See I.J. Goldface- Irolikabe (2007) *Law of Banking in Nigeria*, Lagos: Malthouse Law Books, p.180

³ Adedokun Adeyemi Op.cit.

port agents, produce forged letters of credits, and spurious bank drafts purportedly issued by Nigerian banks with the aim of receiving large consignments of goods and other supplies from overseas manufactures and traders which are never paid for.¹ Similar to this is the practice of printing bank's stationery, carving bank rubber stamp, and use of fake letter headed paper.²

3.1. Money Laundering

This falls under fraud committed by non-bank employees. One of the greatest problems that were encountered by Nigeria was money laundering. The Nigerian Money Laundering Decree No. 38 1995 does not define money laundering, what it does is to criminalize money-laundering activities and make such activity triable. Money Laundering involves putting ill-gotten money into the banking system. This type of money was got from money scams (popularly called "419" which has been identified with S.419 of the Criminal Code of Nigeria, this section deals with obtaining by false pretence which has blurred the image of the country internationally. This is the primary focus of the law enforcement, legislative and regulating bodies. When this occurs, the evidence of this transaction is adulterated or eliminated so the origin of the transaction cannot be traced.

Money laundering has always been about concealing the proceeds of organised crime. Criminals of every kind through traffickers, smugglers, illicit arm dealers, corrupt officials - must find ways to launder the money flowing from their crimes.³ They want their ill-gotten gains to look legitimate so they don't come under the prying eyes of law enforcement agencies. And one way they clean this dirt is to move it around the world's financial systems⁴.

Money laundering and terrorism financing have several similarities. Both are secretive financial activities on a global scale. But terrorism financing differs from usual money laundering patterns because it includes legal, as well as illegal sources of funds, so for terrorism financing we need to look for clean money being used for dirty purposes, as well as dirty money that is been cleansed⁵. A recent case in Hong Kong also highlights how other illicit commodities can be used. Three people were extradited from Hong Kong to San Diego in March for allegedly trying to sell drugs to buy missiles from Talibam⁶.

3.2. Electronic Fraud

Electronic Fraud is a term applied to all cases of fraud involving the computer system. It covers all sorts of abuses ranging from malicious damage to data, outright theft of data, unauthorized amendments for tampering with the programme, unlawful access to the system, willful damage to computing resources, denial of access to authorized user and removal of protection features⁷. In fact, fraud is today seen as a fast growing "Industry" of its own and the advent of information on technology obviously facilitates and accelerates the growth. Security is obviously a key challenge in the evolving electronic culture⁸. The problem transcends both geographical barriers and level of sophistication of various economics. For instance, fraudsters in recent past broke into the computer system of the Federal Bureau of the investigation (FBI) in the United States of America., one of the most protected systems in the world, such development have given organizations and governments serious cause for concern about their secrets.

3.2.1. Nature of Electronic Fraud

The most common types of electronic fraud perpetrated in the banking system include

(a) Manipulation of the computer, including theft of information.

A very sizeable percentage of cases of fraud that often occur in computer environments usually come under manipulation of the computer and theft of information. This may entail manipulation of the hardware, manipulation of computer programmes and the processing of unauthorized data. Cases of fraudsters feeding fictitious data into the computer are also common. Programme manipulation is equally a very common aspect of computer fraud and this is usually perpetrated by smart processing staff. For instance, the update of programme for savings account can be manipulated in such a way that a percentage of interest due on some accounts with large balances are credited to some unrelated customers accounts.

¹ I.bid at p.181

² ibid

³ Natasa Cveticanin, (2002) "Money Laundering in Yugoslavia" *In International Business Lawyer*, Volume 30, NO. 30, November

⁴ Ms Clarie Lo, (2003) Commissioner for Narcotics, Money Laundering and fight against Terrorism: Hongkong Perspective, MS Clarie Lo, National Press Club, Washington D.C. Friday, June 13

⁵ ibid

⁶ ibid

⁷ Esan Ogunleye, (2001) "Fraud and Electronic Banking: Avoiding Pitfalls", *Modus International Law & Business Quarterly*, Vol. 6, p.23.

⁸ ibid

(b) Physical Attack:- Computer hardware with the programmes and data files can be willfully destroyed by a fraudulent and mischievous staff. This may be done to cure any traces of fraudulent practices perpetrated by fraudster.

(c) Misuse of Computer resources:- This usually occurs through unauthorized use of the computer, the programme or data files. The perpetrator may illegally obtain another person's password and use it to access unauthorized files and this may occur through outsiders or combination of the employee and the outsiders using hardware processing and storage facilities for the illegal act. Also, staffs that have access to the systems, via, the new technologies make the financial system most vulnerable to a wide variety of vandalism and fraud. Computerization itself makes fraud easier to commit, harder to detect and exploitable by more people than is possible through the paper and ledger system.

For a successful fraudster, the rewards can be enormous and the risk of detection minimal. Hence, sophisticated computer wizards have ways of passing through lease telephone cables to gain access into database of computerized organizations. Once access is gained, information is distorted in favour of the fraudulent person. The end product might be a movement of big sums from known accounts to the fraudster's account

3.2.2. Causes of Electronic Frauds in Banks

Electronic fraud in a banking environment can among other things be induced by any of the following:-

- (1) Inadequate supervision of staff
- (2) Unplanned acquisition of new technology computerization
- (3) Widespread application of automated systems which leaves no trace of handwriting nor physical documents that can be verified.
- (4) Frequent changes in computer technology.
- (5) Changes in data management and control procedures.
- (6) Inadequate training for the computer operators and their bosses.

4. Malpractices by Banks

Here, we are concerned with those malpractices which can be attributed to the official policies of a bank's management. In this section some broad

Categories of malpractices shall be focused upon, namely; bursting of credit ceilings, illegal sales of foreign exchange round tripping of funds. (i) Exceeding Credit Ceilings:- In Nigeria, the Central Bank of Nigeria¹ imposes general credit ceiling on banks on the percentages of their operational funds they may lend out as loans. Within these limits, it then sets out guidelines for the sectoral allocations of such loan funds. In this regard, it is known that banks breach the Central Bank of Nigeria's Guidelines on sectoral allocations. Such breaches may be due to the quest for excessive profits namely: operating policies guidelines. Such activities must be classified as malpractices, properly so called. So should motivated bursting of the overall ceiling levels.

(ii) Illegal sales of Foreign Exchange: Banks are known to be Purchasing foreign exchange from independent sources in circumstances almost similar to what obtains in 'parallel' or the 'black' market. The banks then sell off such privately purchased foreign exchange to their customers at exorbitant rates. Another malpractice in this area is that the banks hoard their officially purchased foreign exchange. They are able to account for their sales by entering into their sales the transactions involving their sales of the parallel market purchases. This then involves cooking up the books to reflect what was considered to be acceptable exchange sales rates, which do not often reflect the actual rates of exchange sales. The hoarded officially acquired foreign exchange is also sold at exorbitant rates, leading to exorbitant overall profits all round for the banks. Where any such malpractices have been discovered, the banks at fault would have been suspended from bidding at the next auction.

(iii) Round Tripping of Funds:- This is the practice whereby a foreign bank would guarantee a local loan for a local project. Usually the foreign bank would be a corresponding bank or an affiliate of the local bank. The two banks would then enter into collusion and the following scenario would emerge. On the raising of the bank guarantee by the foreign bank to the Nigerian bank to back up an application to the Nigerian bank for a loan in naira for the execution of the project in Nigeria. The Nigerian bank would then decide to grant the loan. The project would subsequently be executed in Nigeria. All necessary foreign importation would be effected by the normal procedure of purchasing the required foreign exchange on the open foreign exchange market in Nigeria. Usually, during the execution or after the completion of the project, all the parties, namely the contractor or project proprietor, the Nigerian bank and the foreign bank would, in accordance with their initial conspiracy record the failure to execute or complete the project. The Nigerian bank would then formally call upon the foreign bank to remit the amount of the foreign exchange provided for in its guarantee to enable the completion of the project or reimbursement of itself.

The foreign exchange so transferred would then be sold at exorbitant rates locally. After the deduction

¹ Herein after referred to as CBN

of its own profit locally, the remaining amount would then be transmitted back to the foreign bank through the purchase of foreign exchange in the Nigerian market. All the parties to the conspiracy, banks and individuals concerned, would then share the remaining profit over and above the original sum guaranteed in foreign exchange. The issue here is that the involvement of the foreign bank in the form of a guarantee usually does not result in any actual foreign investment in the country.

Additionally, it operates to drain further the available scarce foreign and local resources. Consequently, this malpractice in effect, operates to reduce the amount of foreign exchange available to the country for the real investment for the development of the economy. Also, further depreciation of the naira at the time of the remittance of the money abroad would also result in the contraction of the amount of naira that would have been available for local investment in the Nigerian economy. Consequently, it was a welcome relief, even though somewhat belated, when the malpractice was abolished by circular Number 23, in April 1989.

(iv) Interest Rate Policy: Item 9 of the central Bank of Nigeria Credit Policy Guidelines for 1990 fiscal year provides that banks shall pay interest on current accounts deposit, also that the rate of interest payable shall be subject to negotiation between banks and their customers. Research revealed that virtually all banks did their best to avoid paying interest on current accounts.¹ The guidelines cited earlier further provides that banks shall continue to design their passbook in such a way that the following information will be clearly shown when calculating interest yield on savings deposits, interest rate applied, the amount of savings on which calculation is based and the period for which interest is calculated. Just as was the case with interest on current accounts, most banks flouted this directive

(v) Forgeries: - The areas most vulnerable to fraud and forgeries are the procedures for granting, recording and monitoring of loans and advances to customers². In *Odu v The State*³ and *UBA v Ibhafidon*⁴, what constitutes forgery under the Nigerian Criminal code arose. Nevertheless, looking at definition of the word 'forgery' in the dictionary, it means "an act of making or writing in fraudulent imitation". The more generally acceptable definition of the word is "the act of falsifying or altering any writing for customer's signature."⁵

5. Causes of Frauds⁶

The causes of frauds can be grouped into two classes - the institutional and environmental/social factors. The institutional factors are those traceable to the internal environment of the bank while the environmental social factors are those which result from the influence of the environment/society on the banking industry.

5.1. Institutional Causes of Frauds:⁷

Various authors and professionals in the industry have unanimously identified the institutional causes of frauds to be:

Volume of Work: The amount of work done by bank officials could be so too much that frauds could easily pass undetected by such officials.

Number of Staff: Where an official supervises a large number of staff, there is a high likelihood that fraud could go undetected.

Nature of Services: Frauds can be caused where documents of value and liquid assets are exposed to an indisciplined staff of unauthorized persons, for example, customers.

Banking Experience to Staff: Frauds in banks occur with higher frequency among staff with little experience and knowledge of banking practice. Where professionally qualified bankers are involved in frauds, they are more likely to swindle larger sums of money than the less qualified staff.

Staff Negligence: In many cases, staff negligence has led to frauds in banks. Negligence itself is a product of several factors, including poor supervision, lack of technical knowledge, apathy, etc.

Inadequate Training of Staff: Staffs are not given adequate training on how to easily detect frauds.

Inadequate Infrastructure: Poor communications system, power failure which result in a backlog of unbalanced posting, congested office space, etc also encourages the perpetration of bank frauds.

Recruitment System: Poor recruitment system, where relevant technical knowledge, competence, character and other qualities are sacrificed at the altar of non-performance related factors such as connections and nepotism, constitute important facilitators of frauds in banks.

Poor Management: Banks with poor management record higher incidence of all sorts of frauds than those with effective management. Poor management gives rise to ineffective and poor control system and

¹ I.J. Goldface- Irolikabe (2007) Op.Cit p.185

² Ibid at p.179

³ (1965) 1 A N. L. R. 25 (Sc).

⁴ Supra footnote 5

⁵ See *B.O.N. v Maidamisa* (1997) 10 NWLR pg 408 at 424

⁶ Esan Ogunleye Op.cit.

⁷ Esan Ogunleye Op.cit.

indiscipline among staff thus creating an environment for frauds to flourish.

Poor Security Arrangement for Documents: In banks where security arrangements for valuable documents are weak, poor and vulnerable, it is easy for fraudsters to have their way without detection.

Frustration: When management practices negates the aspiration and needs of staff it could result in frustration on the part of the generality of staff. Frustration in turn breeds fraudulent practices in banks. Delays in Operational Procedures: Delays in operational procedures create opportunities for hatching frauds in banks thus making prevention and early detection difficult.

Use of Sophisticated Accounting Machines: when sophisticated accounting machines are in use and are manned by inadequately trained staff, errors could arise and thus lead to the production of incorrect records. These machines could be employed to deliberately omit entries, substitute improper calculation and to manipulate documents.

Lapses in the Management Control System of Corporate Customers: Here, fraudulent staff in both the banks and in the employment of the corporate customers could collude to take undue advantage of the lapses observed in the management control system of corporate customers.

Negligence of Customers: It is the negligence on the part of customers that provides ample opportunities to bank staff to perpetrate fraud.

5.2. Environmental and Social Causes of Fraud¹

Personality Profile of Fraudsters:

Most individuals with inordinate ambition are prone to committing frauds. Such individuals are bent on making money by hook or by crook. Such people dismiss morality as an unnecessary prerequisite for virtuous life. To them, the end justifies the means they are usually unscrupulous and opportunistic.

Lack of Effective Deterrent/Punishment: Although it may be considered a moot point, it is argued in some quarters that lack of effective deterrent such as heavy punishment could be a factor contributing to the perpetration of frauds in banks.

Societal Values: The value system in any society is the set of rules that prescribes what is right or wrong within that society. It can be argued that the main causes of frauds in banks in Nigeria are traceable to the general dishonesty in the society where morality is thrown to the dust bin. Misplacement of society values, the unquestioning attitude of the society towards unusual sources of wealth etc are contributory factors to frauds in the country.

Fear of Negative Publicity: Many banks fail to report fraud cases to the appropriate authorities as they believe that doing so will give unnecessary negative publicity to their banks. This attitude encourages individuals with inordinate ambitions to defraud the banks.

6. Legal Framework for Combating Banking Malpractices in Nigeria

The main legal provision aimed at preventing the occurrence of Malpractices in the banking industry in Nigeria is the Banking and other Financial Institutions Act 1991. This is an Act designed to regulate the practices of banking industry in the country. By the terms of the provisions of the acts, one may be tempted to say that the banking sector is the most regulated sector of the nation's economy.

The Banks and Financial Institutions Act of 1991² provide that every bank shall cause to be kept proper books of accounts with respect to all transactions of the bank.³ It provides that every bank shall submit to the bank not later than 28 days after the last days of each month or such interval as the bank may specify a statement showing the assets and liabilities of the bank and analysis of advances and other assets, at its head office and branches in and outside Nigeria in such form as the bank may specify from time to time.⁴ The Act⁵ If any person being a director, manager or officer of a bank (a) fails to take all reasonable steps to secure compliance with any of the provisions of this section;(b) has by his willful act been the cause of any default thereof by the bank, he is guilty of an offence and liable on conviction, in respect of paragraph (a) of this subsection, to a fine of N100,000 and in respect of paragraph (b) of this section to a fine of N50,000 or to imprisonment for a term not exceeding ten years

The Act provides⁶ that any bank which fails to comply with any of the requirements of subsection (1) or(2) of this section is, in respect of each such failure, guilty of an offence and liable to a fine not exceeding N25,000 for each day during which the offence continues..⁷ S.27 BOFIA provides that subject to the prior

¹ ibid

² hereinafter referred to as BOFIA in the paper

³ S.24(1)

⁴ S.25(1)18

⁵ S.24(5)

⁶ S.25(3)

⁷ See Akanle Oluwole.(1985) "Developments in Commercial Business and Trade Laws" in Aguda (ed) *The Challenge of the*

approval in writing of the bank, a bank shall not later than 4 months after the ends of its financial year forward to the Central bank copies of balance sheets and profit and loss accounts duly signed and contained the full and correct names of the directors of the bank. S.27(5) Any bank which fails to comply with any of the requirements of this section is in respect of each such failure guilty of an offence and liable on conviction to a fine of N10,000 each day during which the offence continues

Furthermore, bank examiners supervisors are appointed pursuant to S.30 of the Act. S.30(1) provides that there shall be an officer of the bank who shall be appointed by the Governor to be known as the Director of Banking Supervision or by such other titles as the Governor may specify. S.30 (3) & (4) provides respectively that the Governor shall appoint to assist the Director of Banking Supervision such other officers of bank as the Governor may from time to time decide. The officers may be designated examiners or have such titles as the Governor may specify. S.31(7) provides that every bank shall produce to the examiners at such times as the examiners may specify all books, accounts, documents and information which they may require.

S.31 (8) provides for appropriate penalties if any book, document or information is not produced in accordance with the requirement of an examination under this section. It states that if any book, document or information is not produced in accordance with the requirement of an examiner under this section or what is produced or furnished to

an examiner is false in any material particular, the bank is guilty of an offence and liable on conviction to a fine of N100,000 and in addition, to a fine of N10,000 for each day during which the offence continues

All these provisions have been put in place so that banks do not furnish false statements or keep incorrect books of account. The purpose of such examination is to enable detection of any malpractice that may have occurred.¹

Apart from the regular examination in the activities and operations of a bank under specified conditions as when :

(a) The Governor has reason to believe that the business of the bank is being conducted in a manner detrimental to the interest of its depositors or creditors, contravening the provisions of the Decree or has insufficient assets to cover its obligations; or

(b) there is request by a specially weighted majority of its shareholders, or

(c) it suspends payments. Where the findings of a special examination reveal any of the preceding circumstance, the Governor may take a variety of actions or decisions, from ordering the bank to take certain steps to the revocation of license.

In order to keep a watchful eye on the financial circumstances of bank officials, the Bank Employees, etc. (Declaration of Assets) Act 1986 was enacted: The Act provides that every bank official should on taking up appointment declare his asset. This is to be updated on a regular basis and in the event of his leaving the bank, he is also required to declare his assets. The purpose of this is to be able to determine the legitimate earnings of a bank official and thereby place an onus on him to establish how he came about any excess. Income that cannot be accounted for from his legitimate sources.² S.7 of the above law³ makes it an offence punishable with 10 years imprisonment for any employee of a bank to own assets in excess of his legitimate known and provable income and assets. In addition to imprisonment, such employee shall be liable to forfeit the excess assets or its equivalent in money. Furthermore, the Act⁴ makes it an offence for any person to act as a front for any bank employee. The offence is 'punishable with 7 years imprisonment and the asset in question forfeited to the states. The criminal code⁵ provides for the offences of stealing, cheating, corrupt acceptance of gift, forgery, fraudulent, false accounting etc. Various terms of imprisonment are provided, ranging from two to fourteen years for anybody found guilty of any of these offences in addition or in the alternative to imprisonment, the offender may be ordered to pay a fine usually less than N1, 000. In 1979 also, as an answer to the then prevalent practice of issuing dud cheques for services rendered, the Dishonoured cheques (offences) Act⁶, was enacted. The Act punishes any person who obtains credit for himself or any other person by means of a cheque which is subsequently dishonored. The offender, if an individual, is liable to two years imprisonment without an option of fine body, to a fine of not less than N5, 000. The Money Laundering Act of 1985 has also criminalized money laundering in Nigeria

Exchange control laws and regulations play prominent part in National financial policy execution, and are of overwhelming importance in controlling international financial transaction. Capital flows from one

Nigerian Nation: An examination of its Legal Development. 1960-85 ,Lagos

¹Akanle Oluwole, (1990) "Legal Control and Prevention of Crimes in the Banking Industry" in *Banking and other Financial Malpractices in Nigeria (ed.), Abuja: Federal Ministry of Justice Law Series.*

² Declaration of Assets) Decree 1986.

³ Oluwole Akanle Opcit.

⁴ Declaration of Assets) Decree 1986

⁵ Criminal code of Nigeria

⁶ Dishonoured Cheques (offences) Act NO 44 of 1977

country to another affect both the country which is investing the Capital or lending it, and the which is borrowing the Capital or where it is being invested:- such free flow of capital tends to inhibit the ability of government to pursue an Independent monetary policy, and may also impawn its economic sovereignty. This is so because the free flow of funds affects a country's balance of payments, internal liquidity, and consequently, money supply and inflation. Such free flow of funds may also have the unpleasant effect of diverting in to foreign and other unauthorized hands those savings in foreign currency which may otherwise be available for domestic investments.

Exchange control Act 1962,¹ makes comprehensive provisions for exchange control by conferring fines in relation to currency, payments, securities, debts transfer and settlement of property, and for other purposes involving foreign exchange transactions.

Exchange Control Anti-Sabotage Act 1984² made revolutionary amendments to the exchange Control Act 1962, and introduced the establishments of special tribunals to try offences arising there under, and makes anyone convicted to suffer stiff penalties.

Foreign Currency (Domiciliary Accounts) Act of 1985³ in S.1 (2) provides that citizens of Nigeria, aliens resident in Nigeria, bodies corporate and Un-incorporated registered under the relevant laws operative in Nigeria, foreign diplomatic and Consular missions and International organizations and such other persons as the armed forces ruling council (AFRC) may from time to time designate, and operate Foreign Domiciliary Accounts) in the foreign currencies designated . The operation of the account could be by bank drafts mail or telegraphic transfers' but anyone who wishes to operate and make deposits into the account other than by any of these modes of operation, may produce evidence of importation of the currency or a declaration in the prescribed form. The Act empowers the C.B.N. in its normal course of duties to control and supervise the general operations of the provisions of the Act while S.6 of the Act provides stiff penalties for unauthorized dealers or forgers, or whosoever defrauds, in the process of operating the accounts. One cannot readily notice any omission or shortcomings in the Act to facilitate foreign exchange malpractice, though one cannot rule out subversion of some of its provisions

Bills of Exchange Act (Cap 21) 1988³⁰ is the law codifying the rules and commercial practices relating to bills of exchange, cheques and promissory notes. The provisions of the Act have stood the test of time, and it does not appear there is any shortcomings which have not been rectified up to date, to any foreign exchange malpractices.

SFEM Act 1986³¹ as an Act seeks to establish and bring order in the second-tier foreign exchange market and ensure that transactions conducted in the market pass the test of integrity and probity. Exchange of capital laws and regulations play prominent part in National financial policy execution, and are of overwhelming importance in controlling international financial transactions.

7. Suggested Reforms.

- (1) All the existing penal provisions mentioned in this paper relating to banking malpractices should be over hauled with a view to their modernization.
- (2) Committees should be set up or commissioned specifically for the purpose of carrying out the exercise in (1) above in particular, the committee or group should be required to:
 - (a) examine the types and scope of existing offences and relate these to existing malpractices, with a view to suggesting the creation of new offences where desirable or the expansion or modification of existing ones.
 - (b) examine existing penalties prescribed for the offences and determine their adequacy or otherwise bearing in mind the cost/benefit effect of punishment on the criminal. In this respect, consideration should be given to the imposition of fines which could be a multiplier of the amount involved in the malpractice and, in any case, with a guaranteed minimum.
- (3) The police and the law enforcement agencies should be more equipped for the task of combating banking malpractices as discussed in this paper, they should also collaborate on crime investigations. Nigeria law enforcement agencies can also team up with law enforcement agencies of other countries in actualizing this
- (4) More Special Economic Crime Unit should be set up in Nigeria in respect of banking activities and business which will be responsible for the investigation of all banking malpractices, the gathering, collation and dissemination of intelligence information on bank criminals and their methods and the administration of the various laws enacted.
- (5) All the Special Economic Crime Unit in Nigeria should have all of its personnel well qualified and trained in the modern methods of detection and investigation of economic crimes. As regards this it may retain the services of seasoned accountants, computer experts and other specialists. Furthermore, prosecutions of banking

¹ Exchange Control Act of 29th May 1962.

² Exchange Control Anti-Sabotage Act No. 24 of 1984

³ Foreign Currency Domiciliary Act no 18, of 1985

malpractices and other economic crimes should be undertaken by a specialist group of legal officers.

(6) There should be frequent exchanges of training programme and seminars for all law enforcement agencies on means of combating banking malpractices.

(7) In combating electronic fraud there is need to evolve a cost effective strategy that will facilitate the control of electronic frauds. Apart from policies available on electronic banking in Nigeria, there is also a need for a viable legal framework on electronic banking in Nigeria that will eradicate the treat the system have posed to people overtime.

(8) There is a need for putting in effective internal control mechanisms that can check Electronic Banking abuses. The Institute of Chartered Accountants of England and Wales defined Internal Controls as "the whole system of control financial and otherwise established by management in order to carry on the business of the company in an orderly and efficient manner, safeguard its assets and secure as much as possible the completeness of records

(9) There should be a total reorientation of citizens of the country on issues of corruption/ banking malpractices. If the leaders of the country could also lead by example and transparently in that regard then the problem will be nipped in the bud.

7. Conclusion

The prevention, detection and punishment of economic crimes especially banking malpractices is highly essential. Banking malpractices causes economic set-back for any nation in which it is prevalent. When Banking malpractices come to a peak people will loose confidence in using banking and negotiable instruments for carrying out contractual and other obligations. Such loss of confidence then causes a slowdown of the local economy and raises suspicion internationally in commercial and economic circles. Instruments of international commerce like letters of credit, bank drafts, bills of exchange emanating from local banks will then be subjected to serious scrutiny and suspected as fake abroad. Nigeria and other nations of the world of the world should therefore join hands in combating this evil. Jurisdictions around the world should all put in place strong and effective anti-banking malpractices regimes at the domestic level. International cooperation is equally important in fighting these banking malpractices. There must be at all times close collaborations between the different countries of the world.

Nigeria and Countries of the world should therefore not relent in the fight against banking malpractices so that the Banking sector which constitutes a major pillar on which the economies of the nations of the world are erected will not be destroyed. The suggestions offered in this paper are very instructive in this regard.

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