

Whistle Blowing: The Position of Nigerian Legislation in Banking

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Abstract

Whistleblowing can be a highly instrumental tool in curtailing corruption the banking industry. However, the act of whistleblowing in Nigeria is not common practice. This may be attributed to the absence of a robust statutory framework that is able to provide protection in the event that a whistleblowers identity is exposed. The absence of this framework also raises difficulty in promoting good corporate governance practices. Whistleblowing is an important concept in both banking and other industries. This study is important as it affords the opportunity to explore the concept and how this tool can be used to curb bad practices. It is also important as it shows how whistleblowing, with adequate protection, can be effective in the work place. This paper will consider whistleblowing, using the Nigerian banking system as a case study. It will focus on the current legal framework; its effectiveness and limitations. It will also provide justifications for the need for enhancement.

Keywords: Whistleblowing, Protection, Nigerian Banking, Legal Framework

Introduction

The act of whistleblowing is the disclosure of the behaviour of a company, or those who are placed in a position of responsibility, that is illegal, immoral or could be categorised as a serious wrongdoing.¹ There are several characteristics required to qualify the act of “disclosed information”. Firstly, there is the *intentional* disclosure of information. Secondly, the person disclosing this information would normally be within close proximity to the employer.² Thirdly, the information sought to be disclosed needs to be pertaining to the company/organisation in question. Finally, the disclosure needs to be in the public or private interest.

Efforts have been made to curtail bad practices and serious wrongdoings within the Nigerian banking system. These efforts are evident within some statutory provisions,³ but primarily, the Guidelines issued by the Central Bank of Nigeria (CBN) in 2012.⁴ These Guidelines consider how best to promote good corporate governance and directs banks and non-financial institutions to implement policies to facilitate the whistleblowing framework.

While it would be unjust to disregard this effort, the CBN Guidelines fall short of offering a robust mechanism to protect the whistleblowers *themselves*. The Guidelines offer no internal mechanisms or procedures to cater to a whistleblower in the event that their identity is exposed. This means there is still a chance that the whistleblower may report an incident and remain unprotected. This further illustrates that there are no strong measures in place to ensure that the whistleblower will not face a serious disciplinary sanction, unfair dismissal or suffer discrimination from their employers.

The loopholes indicated above imply that the achilles heel is not necessarily in the failure of laws to deal with whistleblowing, but rather, the non-existence of sound procedures to offer protection to whistleblowers. The mechanisms available currently have proven inadequate in providing protection, confirmed by Nigeria’s track record in curtailing corruption. At present, there is a Whistleblower Protection Bill before the National Assembly.⁵ In passing this Bill into law, with an emphasis placed on ensuring the protection of whistleblowers, this would further create an amplified view of a single instrument, for whistleblowing. The enactment of this Bill will additionally change the corporate culture of turning a blind eye to evident wrongdoings in banking.

Nigerian Banking

Nigeria’s banking system has an intricate structure. This is because it accommodates several types of banks and, non-financial institutions.⁶ The CBN is the apex bank, i.e. the bank that controls other banks and it has a number

¹ Arszulowicz, M and Gasparski, W.W., “*Whistleblowing: In Defense of Proper Action*” Transaction Publishers, 2011. Business & Economics

² While generally, the whistleblower is a current or, former employee, there are several exceptions to this. It is possible that the whistleblower witnessed the information sought to be disclosed whilst not within close “working” proximity. Thus, the Whistleblower could potentially be a stakeholder that has an interest in organisation itself. However, for the purposes of this article, Whistleblowing is limited to those who are considered workers/employees in the Nigerian banking industry.

³ For example, in the Economic and Financial Crimes Commission (Establishment) Act 2004

⁴ The Code of Corporate Governance for Banks and Discount Houses in Nigeria initially issued in 2012. Available at: < <http://www.cenbank.org/OUT/2012/CIRCULARS/FPR/Exposure%20Draft%20-%20Corporate%20Governance%20Code%20&%20Whistle%20Blowing%20Guidelines.PDF>> Accessed 17th August 2015

⁵ SB. 233 C4781 Available at: < <http://www.nass.gov.ng/document/download/904> > Accessed 17th August 2015

⁶ The Nigerian banking system is composed of banks, other financial institutions, insurance companies and discount houses. In addition, the banking structure is comprised of community and traditional banks which are designed to offer banking in the

of banking law instruments that apply.¹ However, none of these instruments provide specific protection for staff in the banking industry who “whistleblow” on bad practices that they may witness or have knowledge about.²

In 2012, the CBN issued Guidelines for banks and other financial institutions in Nigeria.³ The Guidelines were created to provide stakeholders and employees with the opportunity to report acts that may constitute a fraud, unlawful behaviour or a failure to comply with bank related directives. The aim of the Guidelines is therefore to encourage and further uphold good corporate governance practices and in doing so, also maintain consumer confidence.⁴

The Whistleblowing Guidelines also provide that the Board of Directors of banks and other financial institutions are required to implement a whistleblowing system and additionally, set up a policy for stakeholders and employees. Section 4.0 of the Guidelines provides that the anonymity of the whistleblower needs to be ensured.⁵ This section also provides that ‘no bank, or financial institution shall subject a whistleblower to dismissal, redundancy, termination, undue influence, duress, withholding of benefits, and any other act that may have a negative impact on the whistleblower.’ However, whilst the Guidelines provide this protection for whistleblowers, it fails to provide recourse in the case that a whistleblower faces any of the above challenges.⁶

Protection for Whistleblowers:

In industries that are small and tightly knit; there is the fear that obtaining work with another employer within that industry could be a challenge. This fear may be as a result of the former employer not providing a good reference or blacklisting the whistleblowers name. In the UK, there are provisions in place which address the possibility of employers blacklisting names or giving the whistleblower a bad reputation for raising genuine concerns.⁷

The acceptable forms of recourse in terms of Nigerian banking would be to implement procedures that allow an employee to institute an action against his or her employer. These procedures could be utilised in the event that the whistleblower suffers any negative impacts.

Whistleblowing is not a common practice in Nigeria and this is largely due to the corporate culture. This is endemic to all industries, not just banking.⁸ Generally, it is not common for members of staff who witness improper actions of their superiors and consider reporting such incidents. While efforts are made to improve this by way of Guidelines and the promotion of corporate governance in the corporate setting, there is still a long way to go.⁹

With this corporate culture in mind however, a notable case is that of the former CBN Governor, Lamido Sanusi¹⁰ who “blew the whistle” and alleged that funds were “missing” from the State Oil Corporation¹¹ in 2014. It was claimed by the CBN that over \$20bn of Nigeria’s treasury was unaccounted for. The Governor was suspended by the then President, Jonathan Goodluck¹² who asserted the reason for Governors suspension was his ‘financial recklessness, fraud, and fiscal misconduct’.

rural areas in Nigeria.

¹ Banks and Other Financial Instruments Decree (1991) 2004; the Central Bank of Nigeria Act (1991) 2007.

² For example, there are no provisions within the CBN Act or BOFI which enable an employee directly employed by the CBN to disclose information which may be illegal or immoral.

³ The Code of Corporate Governance for Banks and Discount House and Guidelines for Whistleblowing in the Nigerian Banking Industry was initially issued in 2012. Available at: <<http://www.cenbank.org/OUT/2012/CIRCULARS/FPR/Exposure%20Draft%20-%20Corporate%20Governance%20Code%20&%20Whistle%20Blowing%20Guidelines.PDF>> Accessed 17th August 2015

⁴ In 2014, the Guidelines were further revised. Available at: <<http://www.cenbank.org/Out/2014/FPRD/Circular%20on%20Code%20of%20Circular%20on%20Corporate%20Governance%20and%20Whistle%20Blowing-May%202014%20%283%29.pdf>> Accessed 17th August 2015

⁵ Ibid.

⁶ The Sanctions in the Code of Corporate Governance relate to compliance of the code itself. It does not provide protective measures from the perspective of the whistleblower. See: S. 8.1.3 Code of Corporate Governance for Banks and Discount Houses in Nigeria. Available at: <<http://www.cenbank.org/Out/2014/FPRD/Circular%20on%20Code%20of%20Circular%20on%20Corporate%20Governance%20and%20Whistle%20Blowing-May%202014%20%283%29.pdf>> Accessed 17th August 2015

⁷ See: S.43 (b) Public Disclosure Act 1998 and also: S.19 Enterprise and Regulatory Reform Act 2013

⁸ Omisore, Bernard O., and Oyende, Adenleke A., “Work Ethics, Values, Attitudes and Performance in the Nigerian Public Service: Issues, Challenges and the Way Forward” Journal of Public Administration and Governance ISSN 2161-7104 2015, Vol. 5, No. 1

⁹ Ugwu, I L., “Unethical Behaviour in Nigerian Organizational Settings: Its Evolution, Dimensions and Impact on National Development” Vol. 7, No. 2; February 2011; See also: Ogungbamila, B., “Whistleblowing and Anti-Corruption Crusade: Evidence From Nigeria” Canadian Social Science, 10(4), 145-154.

¹⁰ Sanusi Lamido Sanusi (2009-2014) Suspension in Feb, 2014

¹¹ This is the Nigerian National Petroleum Corporation

¹² President Jonathan Ebele Goodluck (2010- 2015)

The dismissal of Sanusi was challenged based on the provisions of the CBN Act.¹ The Act provides that the President can appoint and dismiss a CBN Governor, provided that he has the approval of two-thirds of the Senate.² In the defence of the Presidency, it was contended that this suspension was not an outright dismissal but a suspension. Therefore, there was no infringement of the statutory provisions of the CBN Act. The suspension was a temporary measure implemented in order to carry out a full investigation of the claims made.³

In 2004, the CBN consolidated the banking industry in a bid to keep up with globalization and transform the position of Nigerian banks within the international financial community.⁴ However, during this reform exercise, five bank CEO's were relieved of their duties. The Investigations showed that several of the CEO's issued non performing loans to bogus companies and in the process, the directors were able to accumulate assets which were substantially greater than their annual salaries.⁵ The only plausible explanation, and the conclusion drawn by the CBN, was that there was a trace of fraudulent activities and misuse of power by the bank executives.

Drawing on the above example then, it remains possible that in carrying out some of these financial transactions, it is more likely than not that at least one person, somewhere would have been aware of these fraudulent activities. However since the CBN Guidelines were only issued in 2012, there has clearly been a gap in regulatory support to enable witnesses or bank staff to whistleblow. In addition to this, the fear of dismissal and the possibility of being subjected to a hostile working environment because of their whistleblowing would have been one of several reasons that employees chose to remain silent.

Departure from Standard Practice

The departure from following agreed standards is a culture embedded in Nigeria's financial industry. This culture gives rise to a high level of insider dealing and market abuse, particularly in Nigeria's capital markets. In some industries, banking specifically, it is possible for staff to bypass certain security protocols if a customer is well known or highly respected. This attitude is cultivated under the "*Man Know Man*" principle in that these customers/ persons are well known to the staff. Under this approach, preferential treatment is given to known persons and then it is therefore possible to depart from the general banking standards. Whether this departure results in a severe consequence or not, the acts usually remain unreported by those who are within close proximity to witness it.

The explanation for this non disclosure on the part of the staff/stakeholders who witness it can only be explained by the embedded fear that reporting bad practices or wrongdoing, would almost certainly lead to a severe disciplinary sanction or dismissal. Even if this doesn't happen, these acts go unreported as there is the chance that reporting an act will attract a stigma and lead to ostracism in the corporate environment and the general feeling of exclusion.

The Position of Nigerian Legislation

At present, there is no specific legislation that directly deals with whistleblowing. In the event that a person wants to whistleblow, protection for the identification of whistleblowers can be found in S.39 (1) of the Economic Financial Crimes Commission (Establishment) Act 2004 and S.64 (1) Independent Corrupt Practices and Other Related Offences Act 2000. However, if the identify is for any reason compromised, there is no system in place which offer further protection. These are similar challenges as presented by the CBN Guidelines discussed earlier.

The implementation of the Whistleblower Protection Bill is therefore highly welcomed. A single legislative instrument would be beneficial as it would contain protective measures to bridge the gap where the other statutory provisions appear to neglect.⁶ The bill therefore will provide a safe haven for whistleblowing.

¹ S.8 (1) Central Bank of Nigeria Act 2007. This section provides for the appointment of the Governor and a Deputy Governor of the CBN. The act does not provide provisions for suspension.

² S.11 2 (f) Central Bank of Nigeria Act 2007

³ The action was initially instituted in the Federal High Court, however, it declined jurisdiction. As the matter was an employee and employer dispute, the correct court was the National Industrial Court. See: S.254C (1) (a) Constitution of the Federal Republic of Nigeria 1999; S.24 National Industrial Act 2012

⁴ In 2004, the Nigerian banking industry underwent a consolidation exercise that shrunk the number of banks from 89 to 24. This process was induced by many factors, such as a globalisation and the apparent need to use capital base as a regulatory tool. This move was started by the then Governor, Charles Soludo and completed by the suspended Governor, Sanusi Lamido Sanusi. See: Charles Chukwuma Soludo: Consolidating the Nigerian banking industry to meet the development challenges of the 21st century. Available at: < <http://www.bis.org/review/r040727g.pdf> > Accessed 17th August 2015

⁵ The following Bank Directors were relieved of their duties as provided by the provisions of S.48 2(d) BOFI (1991) 2004. Erastus Akingbola – Intercontinental Bank Plc ; Cecilia Ibru – Oceanic Bank International Plc ; Barth Ebong –Union Bank Plc ; Okey Nwosu – FinBank Plc ; Sebastian Adigwe – Afribank Plc.

⁶ The provisions of the Whistleblower Protection Bill have specific measures which deal with the protection of the Whistleblower. See S.12 1-3 Whistleblower Protection Bill. Available at: <

In addition, this single legislation could be utilised as an anti-corruption tool. It is possible that banks, knowingly or unknowing are used as a mechanism for the purposes of money laundering. In the instance that members of staff are able to bypass certain security measures, it further affords money launders the ability to launder money through banks undetected. If this then remains unreported by members of staff who witness their superiors bypassing these necessary checks, it also further enhances the operations of money laundering. Thus, the passing of the Whistleblower Protection Bill, with protective measures included, would assist in curbing corruption.

To conclude, it is clear that efforts have been made to address whistleblowing. While these efforts cannot be ignored, that there is still a long way to go. The implementation of the Whistleblowers Protection Bill would therefore be welcomed to bridge the gaps discussed. In passing this Bill into law, it would further strengthen Nigeria's banking industry. In addition, the CBN may consider circulating an updated guideline which would reflect the implementation of the Bill into law.

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