

Forensic Accounting as a Tool for Fighting Financial Crime in Nigeria

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ABSTRACT

There has been a dramatic increase in financial crime across the globe especially in developing economies. In Nigeria, the print and electronic media is replete with news of the charges brought against suspected persons accused of financial crime and charged to court by the anti-graft agencies being dismissed for lack of credible and sufficient evidence. The paper highlights how forensic accounting can be employed to resolve that challenge. Forensic accounting assignment is more comprehensive in nature than financial audit. Unlike financial audit which aims mainly at uncovering material deviation in financial data and significant variances from acceptable accounting and auditing standards, forensic audit looks beyond the transactions and audit trail to focus on substances of the transaction instead. It was recommended that the relevant anti-graft agencies should consider engaging the services of forensic accountant to enhance conviction of fraud culprits.

Keywords: Forensic accounting, financial crime, expert witness and Nigeria.

1.0 INTRODUCTION

The risk of financial irregularities has been in existence for a very long time. In fact it was the fear of this and the need to provide owners of wealth with a means of safeguarding their wealth from embezzlement following the rise of the Joint Stock Companies that gave rise to stewardship accounting and later auditing by the Joint Stock Company Act of 1844.

Financial crimes which may involve fraud are crime against property. It involves the unlawful conversion of the ownership of property belonging to another to one's own personal use and benefit. Financial crimes may be carried out by individuals, corporations, or by organized crime groups and victims may include individuals, corporations, governments, and the entire world. During the early decades of the last century, the general believe was that it was not the duty of the auditor to detect fraud and auditors sought to immunize themselves from professional liability by issuing professional pronouncements that minimized or denied professional responsibility for fraud discovery. By the mid-point of the century, authoritative professional pronouncements avoided even using the word "fraud," preferring discreet euphemisms like "irregularities" (Albrecht, Albrecht & Albrecht, 2006; 2008; Commission on Auditors' Responsibilities, 1978). The flight was attributed to a litigious climate in which the most common alleged fault *inter alia* was the auditor's failure to detect a fraud (Jaenicke, 1977; Gray & Moussalli, 2006:17). The unrelenting series of embarrassing audit failures over the last 50 years has prompted a paradigm shift in accounting. Interestingly, in the mid-20th century, when the flight from fraud detection was at its height, a few observers predicted that in the future there will be acceptance of the general responsibility of the auditor to perform tests to detect material defalcations and errors if they exist (Brown, 1962; Gray & Moussalli, 2006:17). These events led to the hiring of fraud detection experts called forensic accountants.

Forensic accounting is defined as the practice of rigorous data collection and analysis in the areas of litigation support consulting, expert witnessing, and fraud examination (Rezaee, Crumbly and Elmore, 2003; 2004:2). Forensic Accounting provides an accounting analysis suitable to the court and forms the basis for discussion, debate and ultimately dispute resolution (Zysman, 2004). Forensic accounting may be described as being the integration of an individual's accounting and auditing knowledge with investigative skills that have been gained from years of practical experience. It is the means by which the forensic accountant will review instructions given by a client, usually through a solicitor, thoroughly investigate those instructions and the underlying circumstances, examine the financial information and any relevant contracts and other agreements, obtain appropriate evidence, prepare any appropriate calculations, form a conclusion and publish the whole in the form of a report suitable for presentation to the court.

This paper seeks to explore how forensic accounting can be used as a tool for reducing financial crime in Nigeria.

2.0 LITERATURE REVIEW

The 1990s witnessed a dramatic change in scope and concerns about forensic accounting as a topic in accounting literatures. Consequently a number of recent articles have focused on the increasing demand for accountants to conduct forensic accounting activities and on the broadening definition of forensic accounting away from the usual narrow fraud detection definition (Cohen, Crain, & Sanders, 1996; Baron, 2006; Wells, 2003; Rezaee, Crumbley, & Elmore, 2006). It has been argued that the definition of forensic accounting is unclear hence the term forensic accounting services has dominated forensic accounting literature and the legal system (Coppolla, 2006; Dorrell, 2000; Durkin & Harry, 1997; Hochberg, 2006; Telpner & Mostek, 2003; Bologna, 2000; Huber & Glenn, 2005; Carmichael et al.,) or in another adversarial context (Gray & Moussalli, 2006:16).

The term “Forensic” means “suitable for use in a court of law”, and it is to that standard and potential outcome that forensic accountants generally have to work. Litigation services and investigative accounting are the two main branches of forensic accounting, according to some experts (Crumbley, 2005; Coppolla, 2006). “Litigation Support” provides assistance of an accounting nature in a matter involving existing or pending litigation. It deals primarily with issues related to the quantification of economic damages. A typical litigation support assignment would be calculating the economic loss resulting from a breach of contract. “Investigative accounting” is often associated with investigations of criminal matters. A typical investigative accounting assignment would be an investigation of employee theft. Other examples include securities fraud, insurance fraud, kickbacks and proceeds of crime investigations. However, it has been argued that, “fraud auditing, forensic accounting, litigation support, investigative accounting, and valuation analysis are often used interchangeably” (Bologna, 1994; 1996). Interestingly, what is at the heart of all the services coming under these names is a search for fraud. Whether the professional is evaluating a business for bankruptcy, conducting an insurance investigation, searching for hidden assets in a divorce proceeding, or investigating the revenue recognition procedures of a publicly quoted company, the fear of fraud is the motivation for hiring the forensic accountant and he is expected to detect fraud where it exist (Gray & Moussalli, 2006:16).

Forensic accounting, also called investigative accounting or fraud audit, is a merger of forensic science and accounting. Forensic science according to Crumbley (2003) “may be defined as application of the laws of nature to the laws of man”. He refers to forensic scientists as examiners and interpreters of evidence and facts in legal cases that also offers expert opinions regarding their findings in court of law. The science in question here is accounting science, meaning that the examination and interpretation will be of economic information. In the views of Joshi (2003) Forensic accounting is the application of specialized knowledge and specific skill to stumble up on the evidence of economic transactions. It demands reporting, where the accountability of the fraud is established and the report is considered as evidence in the court of law or in the administrative proceeding (Kasum, 2009:2). Zysman (2004) defined Forensic accounting as the integration of accounting, auditing, and investigative skills. Simply put, forensic accounting is accounting that is suitable for legal review offering the highest level of assurance and including the now generally accepted connotation of having been arrived at in a scientific fashion (Crumbley, 2006). Coenen (2005) posited that Forensic accounting involves the application of accounting concepts and techniques to legal problem.

Forensic accounting has also been defined as the science of gathering and presenting information in a form that will be accepted by a court of jurisprudence against perpetrators of economic crime (Stanbury & Paley-Menzies, 2010). Smith & Crumbley (2009) defined forensic accounting by distinguishing forensic accounting from fraud auditing. They argue that a fraud auditor is an accountant with a specialized skilled in auditing while a forensic accountant may take on fraud auditing engagements and may in fact be a fraud auditor, but he or she will also use other accounting, consulting, and legal skills in broader engagements. The AICPA defines forensic accounting as services that involve the application of specialized knowledge and investigative skills possessed by CPAs. Forensic accounting services utilize the practitioner’s specialized accounting, auditing, economic, tax, and other skills (AICPA, 2010).

In the views of Singleton & Singleton (2010) forensic accounting comprehensively entails fraud investigation, prevention of fraud and analyzing antifraud controls in addition to gathering non-financial information. Hopwood, Leiner, & Young (2008) define forensic accounting as the application of investigative and analytical skills for the purpose of resolving financial issues in a manner that meets standards required by courts of law. They however contend that while forensic accounting may not make explicit reference to fraud, fraud investigations are integral part of forensic accounting.

Forensic accounting or financial forensics is the specialty practice area of accountancy that describes engagements that result from actual or anticipated disputes or litigation. “Forensic accountants, also referred to as forensic auditors or investigative auditors, often have to give expert evidence at the eventual trial. Other terminologies used to describe forensic accounting include:

Forensic Investigation: The utilization of specialized investigative skills in carrying out an inquiry conducted in such a manner that the outcome will have application to a court of law. A forensic investigation may be grounded in accounting, medicine, engineering or some other discipline.

Forensic Audit: An examination of evidence regarding an assertion to determine its correspondence to established criteria carried out in a manner suitable to the court. An example would be a forensic audit of sales records to determine the quantum of rent owing under a lease agreement, which is the subject of litigation.

Internal Audit: An audit performed by an employee who examines operational evidence to determine whether prescribed operating procedures have been followed.

External Audit: An audit performed by an auditor engaged in public practice leading to the expression of a professional opinion which lends credibility to the assertion under examination

A Forensic Accountant is often retained to analyze, interpret, summarize and present complex financial and business related issues in a manner which is both understandable and properly supported. Forensic Accountants can be engaged in public practice or employed by insurance companies, banks, police forces, government agencies and other organizations. A Forensic Accountant is often involved in investigating and analyzing financial evidence; developing computerized applications to assist in the analysis and presentation of financial evidence; communicating their findings in the form of reports, exhibits and collections of documents; and assisting in legal proceedings, including testifying in court as an expert witness and preparing visual aids to support trial evidence. In order to properly perform these services a Forensic Accountant must be familiar with legal concepts and procedures. In addition, a Forensic Accountant must be able to identify substance over form when dealing with an issue.

Economic or financial crime as a concept apparently first appeared in the criminology literature in 1872, when Edwin Hill used the phrase "white collar crime" (Nelu, 2010:2) but the expression was subsequently established by Edwin Sutherland in his famous work "*Principles of Criminology and White Collar Crime*" published in 1939. He defined the term as "A crime committed by a person of respectability and high social status in the course of his occupation." Though the actions and perpetrators might vary, these crimes all involved "The violation of delegated or implied trust." The cooperative, if clueless, victim was necessary for the predication of the crime.

The above definition identified three principal factors which aids the crime, namely: offense, the offender and society. Offense is an act by respected person in high social and economic status that violates rules or otherwise relating to professional activities. Offenders are usually citizens who by their status are above suspicion. They commit criminal acts in connection with business and their professional conduct, are aware of the lawfulness or unlawfulness of their conduct. They use their social position to violate the law. Society's attitude and reaction to crime often encourages criminals. Thus the main goal pursued by criminals is social or financial success and in trying to achieve the goal, they employ both legal and illegal or unethical means. They believe strongly in the old Machiavellian principle of "the end justifying the means" (Nelu, 2010:3).

Financial crimes are crime against property, involving the unlawful conversion of the ownership of property (belonging to another) to one's own personal use and benefit. Financial crimes may involve fraud which can take the form of (cheque fraud, credit card fraud, mortgage fraud, medical fraud, corporate fraud, securities fraud (including insider trading), bank fraud, payment (point of sale) fraud, health care fraud and so on); theft; scams or confidence tricks; tax evasion; bribery; embezzlement; identity theft; money laundering; and forgery and counterfeiting, including the production of Counterfeit money and consumer goods. Financial crimes may involve additional criminal acts, such as computer crime, elder abuse, burglary, and even violent crime such as armed robbery or murder. Financial crimes may be carried out by individuals, corporations, or by organized crime groups. Victims may include individuals, corporations, governments, and entire economies.

(http://en.wikipedia.org/wiki/Financial_crimes)

3.0 THE NATURE FORENSIC ACCOUNTING ASSIGNMENTS

The procedures adopted in carrying out financial audits are designed to detect material mis-statements, not material frauds hence, financial auditors depend on a sample and rely on examination of audit trail instead of the examination of the events and activities behind the documents. Financial audit procedures are based on uncovering material deviations in financial data and significant variances from acceptable accounting and auditing standards. Forensic audit/ accounting have the following peculiar characteristics:

- (a) It is more of a mindset than a mythology;
- (b) Forensic audit approach is different from financial audit approach;
- (c) Forensic audit is learned from experience not from text books; and
- (d) Forensic audit views fraud as an intentional misrepresentation of material financial facts; financial audit views fraud as an intentional misrepresentation of financial fact of a *material*

nature.

Forensic auditors/ accountants look behind and beyond the transactions and audit trail to focus on substance of the transactions instead. Unlike the financial auditor, the forensic auditor asks the following questions:

- (a) Where are the weakest links in the system chain of controls?
- (b) How are offline transactions handled, and who authorizes them?
- (c) What possible deviations can occur in the system different from conventional good accounting practice?
- (d) What simple way exists to compromise the system?
- (e) What is the nature of work environment in the organisation?
- (f) How can higher management bypass the control systems in the organisation?

Forensic Accountants become involved in a wide range of investigations, spanning many different industries. The practical and in-depth analysis that a Forensic Accountant will bring to a case helps uncover trends that bring to light the relevant issues. Detailed below are various areas in which a Forensic Accountant will often become involved.

Criminal Investigations

Forensic investigations often relate to criminal investigations on behalf of police forces. For example, a Forensic Accountant may be retained by the EFCC, ICPC, The Police forces and organizations such as the Law Society. A Forensic Accountant's report is prepared with the objective of presenting evidence in a professional and concise manner.

Shareholders' and Partnership Disputes

These assignments often involve a detailed analysis of numerous years accounting records to quantify the issues in dispute. For example, a common issue that often arises is the compensation and benefits received by each of the disputing shareholders or partners.

Personal Injury Claims / Motor Vehicle Accidents

A Forensic Accountant is often asked to quantify the economic losses resulting from a motor vehicle accident. A Forensic Accountant needs to be familiar with the legislation in place which pertains to motor vehicle accidents. Cases of medical malpractice and wrongful dismissal often involve similar issues in calculating the resulting economic damages.

Business Interruption / Other Types of Insurance Claims

Insurance policies differ significantly as to their terms and conditions. Accordingly, these assignments involve a detailed review of the policy to investigate coverage issues and the appropriate method of calculating the loss. A Forensic Accountant is often asked to assist from either an insured or insurer's perspective in the settlement of a case. Examples of these types of assignments include; business interruptions, property losses and employee dishonesty (fidelity) claims.

Business/Employee Fraud Investigations

Business investigations can involve funds tracing, asset identification and recovery, forensic intelligence gathering and due diligence reviews. Employee fraud investigations often involve procedures to determine the existence, nature and extent of fraud and may concern the identification of a perpetrator. These investigations often entail interviews of personnel who had access to the funds and a detailed review of the documentary evidence.

Matrimonial Disputes

Matrimonial disputes from a Forensic Accounting point-of-view often involve the tracing, locating and evaluation of assets. The assets to be evaluated and valued may be businesses, property or other assets.

Business Economic Losses

Examples of assignments involving business economic losses include; contract disputes, construction claims, expropriations, product liability claims, trademark and patent infringements and losses stemming from a breach of a non-competition agreement.

Professional Negligence

These investigations are often approached from two different but complimentary perspectives, these being:

- Technical - has a breach of Generally Accepted Accounting Principles or Generally Accepted Auditing Standards or other standards of practice occurred; and
- Loss Quantification.

If the professional in question is an accountant then a Forensic Accountant could be involved with both perspectives. If the matter involves some other profession a Forensic Accountant will normally be retained to perform only a loss quantification.

Mediation and Arbitration

Because of their familiarity and comfort with legal issues and procedures some Forensic Accountants have sought out special training and become involved in alternative dispute resolution (ADR). ADR services include both mediation and arbitration and are designed to help individuals and businesses resolve disputes with minimal disruption and in a timely fashion.

4.0 COMPETENCES REQUIRED OF A FORENSIC ACCOUNTANT

To be considered capable and effective, a forensic accountant must possess the following characteristics/qualities: curiosity, persistence, creativity, discretion, organization, confidence, and sound professional judgement. A Forensic Accountant must be open to consider all alternatives, scrutinize the fine details and at the same time see the big picture. In addition, a Forensic Accountant must be able to listen effectively and communicate clearly and concisely. Moreover, the forensic accountant, auditor and investigator are required to possess some skills which are complementary to the qualities enumerated above. DiGabriele (2007:15; 2009) identified a set of skill, prominent amongst which are:

- (a) **Deductive analysis:** The ability to identify financial contradictions that do not fit in the normal pattern of assignment. In consideration of the barrage of recent financial reporting scandals this skill appears to be necessary and essential for a forensic accountant to meet the objective of uncovering a potential financial fraud. Forensic accounting courses aimed at financial misrepresentations should incorporate course objectives to meet this ability.
- (b) **Creative thinking:** The ability to differentiate between opinion and fact. The essence of being an expert witness is to be able to perform the task of discerning fact from fiction in order to maintain a credible testimony. Courses developed in this area should emphasize the ability to remove any non corroborated opinions from expert reports and testimony.
- (c) **Unstructured problem solving:** The ability to treat each situation as inherently unique and preparedness to solve problems with an unstructured approach. Accounting education has been based around concentrating on compliance with rules and procedures. This skill is a direct contradiction to this concept. It can be argued that a shortcoming of auditors is not seeing the proverbial forest beyond the trees.
- (d) **Investigative flexibility:** The ability to move away from standardized audit procedures and thoroughly examine situations for a typical warning signs.
- (e) **Analytical proficiency:** The ability to look out for what should be provided rather than what was provided. Considering the post financial fraud regulatory environment, solving a financial puzzle with less than a complete set of pieces appears to be the direction the current business environment is heading
- (f) **Oral communication:** The ability to effectively communicate in speech via expert testimony and general explanation of the bases of opinion.
- (g) **Written communication:** The ability to effectively communicate in writing via reports, charts, graphs and schedules the bases of opinion.
- (h) **Specific legal knowledge:** The ability to understand basic legal processes and legal issues including the rule of evidence.
- (a) **Composure:** The ability to maintain a calm attitude when under pressured. The most prevalent area where this is necessary is expert testimony in either deposition or court. The composure of an expert can be an integral component in the ultimate outcome of the case.

5.0 THE ROLE OF THE FORENSIC ACCOUNTANT

The principal role of a Forensic Accountant as an expert witness is to Analyze, Interpret, Summarize and Present Complex Business and Financial deals in a logical, understandable manner supported with facts. An expert witness is a witness, who by virtue of education, training, skill, or experience, is believed to have knowledge in a particular subject beyond that of the average person, sufficient that others may officially (and legally) rely upon the witness's specialized (scientific, technical or other) opinion about an evidence or fact issued within the scope of their expertise, referred to as the expert opinion, as an assistance to the fact-finder. Expert witnesses may also deliver expert evidence about facts from the domain of their expertise. At times, their testimony may be rebutted with a learned treatise, sometimes to the detriment of their reputations. The Forensic Accountant must (a) Investigate and analyze financial information, (b) Develop computerized applications (if applicable) to assist in the analysis and presentation of financial information (Amadieube, 2008). In addition, an Expert Witness must:

- ✓ Communicate Findings in the form of a Report and supporting documents.

- ✓ Assist in any Legal Proceedings.
- ✓ Assist in obtaining documentation necessary to support or refute a claim.
- ✓ Review of the relevant documentation to form an initial assessment of the case and identify areas of loss.
- ✓ Assist with Examination for Discovery including the formulation of questions to be asked regarding the financial evidence.
- ✓ Attend the Examination for Discovery to review the testimony, assist with understanding the financial issues and to formulate additional questions to be asked.
- ✓ Review of the opposing expert's damages report and reporting on both the strengths and weaknesses of the positions taken.
- ✓ Assist with settlement discussions and negotiations.
- ✓ Attend trial to hear the testimony of the opposing expert and to provide assistance with cross-examination.

6.0 APPROACHES TO A FORENSIC ACCOUNTING ASSIGNMENT

Each forensic accounting assignment is unique. Accordingly, the actual approach adopted and the procedures performed will be specific to it. However, in general, many Forensic Accounting assignments will include the steps detailed below:

Meet with the client

It is helpful to meet with the client to obtain an understanding of the important facts, players and issues at hand.

Perform a conflict check

A conflict check should be carried out as soon as the relevant parties are established.

Perform an initial investigation

It is often useful to carry out a preliminary investigation prior to the development of a detailed plan of action. This will allow subsequent planning to be based upon a more complete understanding of the issues.

Develop an Action Plan

This plan will take into account the knowledge gained by meeting with the client and carrying out the initial investigation and will set out the objectives to be achieved and the methodology to be utilized to accomplish them.

Obtain the relevant evidence

Depending on the nature of the case this may involve locating documents, economic information, assets, a person or company, another expert or proof of the occurrence of an event.

Perform the analysis

The actual analysis performed will be dependent upon the nature of the assignment and may involve:

- ❖ calculating economic damages;
- ❖ summarizing a large number of transactions;
- ❖ performing a tracing of assets;
- ❖ performing present value calculations utilizing appropriate discount rates;
- ❖ performing a regression or sensitivity analysis;
- ❖ utilizing a computerized application such as a spread sheet, data base or computer model; and
- ❖ utilizing charts and graphics to explain the analysis.

Prepare the report

Often a report will be prepared which may include sections on the nature of the assignment, scope of the investigation, approach utilized, limitations of scope and findings and/or opinions. The report will include schedules and graphics necessary to properly support and explain the findings.

7.0 CONCLUSION

Financial crimes and fraud have serious negative effect on human capital and infrastructural development in developing economies, especially countries like Nigeria where the menace has become endemic.

In the past auditors issued professional pronouncements that minimized or denied professional responsibility for fraud discovery. The unrelenting series of embarrassing audit failures of the last five decades has prompted a paradigm shift in accounting. It is now tacitly accepted that the auditor has responsibility to perform tests to detect material defalcations and errors if they exist. Expectedly, fraud detection experts called forensic accountants are now being hired in developed economies to investigate cases of financial crime. It is therefore recommended that:

- (a) the forensic auditor as an expert witness should at all times bring his education, training, skill, or experience to bear so that their specialized opinion about an evidence or fact issued within the scope of

- their expertise(expert opinion), as an assistance to the fact-finder can be relied upon, and
(b) the anti-graft agencies should consider engaging the services of forensic accountants to assist them in court cases involving economic or financial crimes.

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