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Eradication of Banking Malpractices in Nigeria: Will Law Alone Succeed?

by

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The place of banks in the economic life of any nation is so strategic that every effort is made by the appropriate national authorities to regulate and effectively supervise banking business. This objective is often achieved through the mechanism of laws designed to purge the banking system of diverse frauds, and malpractices. This paper presents a general compendium of the socio-economic, as well as the cultural background that foster and sustain banking frauds and diverse malpractices in Nigeria. This is followed by an analysis of the various types of malpractices prevalent in the banking system, among which are malpractices by bank employees, those by outsiders (non-bank employees), and those committed by banks themselves as corporate bodies. A deontic consideration of the legal and institutional framework for the prevention, and control of banking malpractices is undertaken. The current laws on banking embody reasonably adequate provisions for the regulation of banking business in Nigeria. However, it is revealed that legislation alone cannot achieve a clean banking system for Nigeria. The larger interest of trade, commerce, and economic prosperity demand that a clean, stable, and viable banking industry be preserved through a combination of legislative and institutional methodologies, as well as social activism, and attitudinal change in the citizenry. This new order will ensure that economic criminals will no longer be glorified over their ill-gotten wealth. The paper concludes with an attempt at articulating a prescriptive stance promotive of certain policy ends in the realisation of the objective of a clean banking system.

Banking malpractices, alternatively referred to as corruption, and economic crimes, constitute the genus of what is generally known as, and commonly called "elite" or "white collar" crimes. Being largely economic crimes, banking malpractices are in the main, no more than a sub-class of white collar (and sometimes executive) crimes which possess identical characteristics that distinguish them from other classes of criminal offences. These distinguishing characteristics, *inter alia,* are, firstly, that they are often perpetrated essentially for economic benefits, and thus involve some element of trade, industry, commerce, corporate service, or politics and public administration. Secondly, they involve some form of organisation in the context of a formal relationship between the parties involved in the commission of the offences. Thirdly, they embrace either the genuine employment or the mis-employment of legitimate forms and techniques of commerce and industry, or politics and public administration. Finally, the persons usually engaged in the commission of these malpractices have high social standing that may be political, economic, and/or bureaucratic power serving as a protective umbrella under which they find refuge.

The aforestated features reveal, as well as confirm that, as opposed to those involved in the commission of elementary street crimes, the perpetrators of elite or white collar crimes – and

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by implication banking malpractices – have close league or powerful influential relationships (or are identical) with those persons who control or at least influence the socio-legal definition of, and sanctioning of crime. Through such control or influence, they become able to manipulate either directly or indirectly, official and societal perception of, and response to their own criminality. Additionally, there are yet other significant differences between these elite crimes and the common category of street crimes; these differences propel inhibiting productivities for effective control. Subtlety or remoteness of perpetration and the concomitant difficulties of discovery or reportability; technically, defective procedures for detection, as well as for handling discovered cases, the typical "police investigation" syndrome; the rather indistinct level of awareness of victims; and the elite instigated societal response as to moral sanctions, connivance or tolerance.

Banking malpractices, (by whatever name called) have become an endemic component of Nigeria's banking and financial system. The *modus operandi* though discreet, are discernible, and the magnitude only imaginable. All tiers of government (local, state and federal), individuals, and corporate bodies are all victims but the level of damage done is usually, both in extent and impact diffuse and remote. The cost in various respects is unquantifiable, essentially cumulative in form and practice. Control being largely departmental, becomes somewhat lax, discriminatory, and ineffectual; and to the extent that almost every personnel in the higher levels of the banking and financial sector is indictable.

However, its tenacity and resilience is often assured by the "signal" conduct and flamboyant performance of those with economic, political, bureaucratic and social power. Offences within any banking institution are by and large connected with money. Whatever, may be the motivation, and/or style, banking fraud or malpractice is an action or conduct by which the perpetrator aspires to gain a rather dishonest advantage over another in pecuniary terms. It may take the form of forgery, and in this regard, documents, cheques, draft currency notes, bills of exchange, bill of lading, various other negotiable and quasi-negotiable instruments like promissory notes, treasury receipts, and the like, are good examples of items that are usually forged.

The identifying characteristics of white collar crimes point to the fact that it is not an aberration to be "rectified". Ordinary aberrations are far in-between. Behind an enduring and systematic aberration in a concrete and discernible direction, must lie a cause or causes other than aberration alone. Thus considered, banking malpractices in Nigeria, in the main, represent a visible manifestation of something "basic" about Nigerian society itself. The immediate explanation for the magnitude and universality of frauds and other banking and financial malpractices in Nigeria lies in the discovery of something inherently "basic" about the Nigerian society.

The appalling prevalence of aggravated vices which threaten the Nigerian banking system is an unhappy heritage of her economic system. The yoke of the present time, and the hope of the future obligate the nation to fashion out the modus operandi of a clean banking and financial order. Inevitably, and perhaps incontestably, the primary place to look for, and discover this "basic" is the variant of capitalism adopted by Nigeria as the basis of its developmental strategy, with its concomitant stress and strain in terms of different variables. These include the demands of societal status, relatives, extended family connections, friends, and other dependants, and bearing as it does, grave consequences for social relations at both family and national levels. Simply put, Nigeria's brand of capitalism imposes a demand that is both personal, and social. The resultant pressure often engenders and sustains the propensity for fraud and other malpractices such as are today corroding the fabric of Nigeria's banking and

financial systems.

This paper will try to present a compendium of banking frauds, and malpractices, with an attempt at articulating a prescriptive stance promotive of certain policy ends. Three distinct categories of banking malpractices will be reviewed. These will include malpractices by bank employees, those by outsiders (non-bank employees), and those by banks themselves as corporate bodies. In the final analysis it will be considered whether or not enacted legislation alone can serve the object of eradicating banking malpractices in Nigeria.

MALPRACTICES BY BANK STAFF

Malpractices perpetrated by bank employees consist largely of, but by no means exclusive of the falsification of entries of accounts of customers with a view to siphoning the excess proceeds or shortfalls; forgeries of signatures of accounts, deliberate distortion of records of loans and other transactions, cash theft by bank officials, more especially those in charge of cash, and in some cases even those in the top management levels are not left out. The major sources of staff malpractices are vast and varied, as the innate ingenuity of elite criminals often respond to any given situation with new techniques. For instance, the introduction of computerised banking has brought with it computer related crimes associated with computer virus, and dishonest programming. Banking staff also engage in the following kinds of malpractices: forged cheques, forged letters of credit, forged mail and telex transfers, suppression of cash, foreign exchange frauds, unauthorised printing of bank stationery, unauthorised carving of bank rubber stamps, double pledging, wrongful clearing of cheques, issue of cheque books, and some forms of counterfeiting.

CASH FRAUDS

There are several methods of cash malpractices that can be engaged in by bank staff. From outright cash theft from unsuspecting cashiers by their colleagues, to suppression of cash by cashiers themselves. Managerial theft may take the form of removing cash from strong rooms or replacing strong room money with counterfeit currency. Among these various forms of cash frauds, suppression of, and subsequent conversion of cash lodgements by cashiers rank highest. In the case of **Aeroflot (Soviet Airlines) vs United Bank for Africa** an officer of the appellant airline, deposited money in the airline's account with the respondent bank, and had a properly filled and stamped bank teller issued to him. The teller in ordinary bank practice, when stamped and signed by the receiving cashier evidences receipt by the bank of such lodgement. So, in that case the customer believed that proper acknowledgement of the deposit was made, when the cashier issued him with a properly filled-in and stamped teller for the amount deposited. When later the airline's statement of account from the bank showed an amount less than what it ought to be, the airline customer complained. There was no record of such deposit in the bank's books, but the teller was properly filled-in, and stamped, bearing testimony to the deposit. It was later discovered that the "cashier stamp" used on the teller had earlier been declared missing in the bank, and subsequently replaced. Apparently therefore, the "missing" stamp was stolen by the cashier and was being used by him to stamp tellers, thereby giving the impression of genuine transactions, but without him recording his receipts in the bank's books. This case merely represents the tip of the iceberg of cash thefts committed by bank staff.

FORGED CHEQUES

Forgery is the making, or alteration of a writing to the prejudice of another man's right, with the aim of conferring on the forger, some benefit or right, or title to which he is ordinarily not entitled. It is not possible to defraud a bank or to successfully carry out a forgery without the active participation of, or passive connivance of bank staff. Forgery may involve the illegal and unauthorised adjustment of the amount of a cheque, or the signature of the account owner or even the alteration of the date on an otherwise stale cheque or other negotiable instrument. These occur mainly on corporation accounts, and are invariably committed by insiders having access to the company's cheque book, in collusion with fraudulent bank staff.

The provisions of section 70 and 73 of the Companies and Allied matters Act,[2] may not help matters in this regard. Under these sections, when read together, a forgery by an officer or agent of a company binds the company where there is no collusion between the company's officer or agent and a third party. In the case of a straight arrangement between a company's officer and a bank staff to clear forged cheques drawn on the company's account such a fraud may well bind the company. In this kind of scenario, no third party is involved. In **Nigerian Advertising Service Limited vs United Bank for Africa**[3] the defendant, which was at all times the plaintiff's banker paid out on the cheques belonging to the plaintiff which had been forged by a messenger in the plaintiff's employment. It debited the plaintiff's account with the value of these cheques. The plaintiff then brought action to obtain a declaration, that the defendants had wrongfully debited its account with the value of the cheques, and that the amount was due and owing. The plaintiff further contended that the defendant had wrongfully paid out the cheques without the plaintiff's authority, and was, therefore, disentitled from debiting its account. It was held that the defendant had wrongfully debited the plaintiff's account with the amount of the cheques.

It is doubtful whether the same verdict would be reached today in view of sections 70 and 73 of the Companies and Allied Matters Act. Both sections embody the view expressed in the case of **Lloyd vs Grace Smith**[4] where the fraud was committed by a solicitor's clerk for his own benefit in the course of his employment without his employer's knowledge. It was held that:

> *As the fraud was committed in the course of the clerk's employment and not outside the scope of his authority the solicitor was liable to the client although he was innocent of the fraud and the fraud was committed not for his benefit, but for the benefit of the clerk.*[5]

In the light of sections 70 and 73 of the Companies and Allied Matters Act which embody the same view as seen above, it is submitted that as far as corporate bodies are concerned, if an officer or agent commits fraud using forged cheques, while acting or purporting to act in the course of the company's business, the company is bound. This, of course, presupposes that he is authorised, or held out as authorised to transact business on account of his employer, or principal. In the circumstances the employer or principal though innocent of the fraud, is liable for the fraud of the officer, or agent, whether the fraud results in a benefit to the employer, or principal, or not. It would seem from all this, that bank staff acting in collusion with corporate officers or agents can clear cheques bearing forged signatures and this will bind a company so defrauded. Research did not yield any case decided under the provisions of sections 70 and 73 of the Companies and Allied Matters Act. It will, however, be interesting to

see what views the courts will take in the event of a case coming before them. For now, the above submissions remains largely academic.

LOAN FRAUDS

Within the operations of specialised institutions like the Industrial Banks, Agricultural and Co-operative Banks, as well as Mortgage Banks, the area most vulnerable to fraud and forgeries are the procedures for granting, recording and monitoring of loans and advances to customers. That loans and advances granted by banks soon acquire the status of "bad and doubtful debts" is not altogether accidental. Loans granted, sometimes get bad right from the onset, that is to say, right before disbursement. This is possible through the manipulations of fraudulent banks staff who sometimes, with the active and guided co-operation of borrowers, create, and/or exploit loop-holes. Procedural loop-holes may thus be exploited to the banks detriment in order that such bank staff may secure for themselves, individual and private gains.

Loan frauds may take the form of outright grants to unintended and unqualified borrowers who, aided and abetted by senior bank staff that may be relatives, friends, and even business partners, make false declarations to mislead the bank. These false declarations may be made outright with the intention to defraud. Some other frauds associated with the processing of loans and advances are "legal" difficulties built into the enforcement of bank's rights in relation to perfection, enforcement and realisation of securities, such as rights under mortgages. These rights may suffer undue delays or other manipulations which eventually frustrate the bank's title to mortgaged property.

An illustration of the effect of legal difficulties is provided by the case of **Chief Edu vs NBN and West African Travel Agency Limited.**[6] In that case, the respondent bank, as plaintiffs, brought an action at the High Court to recover a sum of money owed to them by the first appellant who along with another were first and second defendant respectively. The second defendants, the principal debtors admitted liability, but the first defendants, now the appellant, as the alleged guarantor, denied the bank's claim on the ground that the guarantee expressly limited his liability to certain properties itemised in the schedule, and he was not personally liable in any way. The trial judge found in favour of the bank and the first defendant appealed to the Supreme Court. After a review of English cases on the point, the supreme Court held that the appellant guarantor was not personally liable on his guarantee. Accordingly, he was absolved after his appeal was allowed and the bank lost on the transaction.

The verdict of the apex court was informed by a legal principle. The principle is that where a guarantor pledges his credit for the repayment of a loan by depositing his title deeds, with a promise to execute mortgage in favour of the bank the suretyship thus given does not involve personal liability of the guarantor. The remedies available to the bank, must be contained in the memorandum signed by the guarantor. If it does not involve his personal liability, he cannot be made personally liable to repay such loan. The point to be made is that such legal loopholes are sometimes exploited by senior bank staff to defraud banks in collusion with outsiders from whom they may knowingly accept over-valued security. When such an over-valued security proves inadequate as against the loan granted, the bank cannot recover from the guarantor who takes no personal liability.

OTHERS

There are numerous other malpractices engaged in by bank staff. These 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 accounts. Very senior categories of staff only, can engage in this form of malpractice. Finally, there is the ever present case of granting unauthorised overdrafts, and falsification of records to hoodwink inspectors and auditors. The case of AKWULE VS R,[7] provides a good illustration of unauthorised overdraft. In that case, the appellant, a manager of the Fagge Ta Kudu branch of the Bank of West Africa, in Kano, was alleged to have given out large sums of bank money to his co-accused. In an effort aimed at defrauding the bank, he caused false entries to be made in the bank's ledgers so as to conceal the truth from bank inspectors. He was convicted of criminal breach of trust. Although on appeal, the conviction was set aside on the purely technical ground of the appellant not being a "banker" as provided for under Section 315 of the Penal Code, yet the case provides a clear picture of bank fraud involving bank staff.

MALPRACTICES BY NON-BANK STAFF

It is not an easy thing for an outsider to defraud a bank without the active or passive connivance of an insider or insiders within the bank. Malpractices against banks, therefore, are largely such as may be classified easily as malpractices by banks staff. Notwithstanding, there is a distinction. A majority of malpractices by non-bank staff are aimed at merely using the bank's name as a cover for external frauds. These frauds, may not result in direct financial losses to the banks, but impinge upon the good name and reputation of Nigerian banks in view of their damaging consequences. For instance, it is common knowledge that confidence tricksters, fake businessmen and women, as well as port agents, produce forged letters of credit, and spurious bank drafts purportedly issued by Nigerian banks. The aim of these cheats, being, of course, to receive large consignments of goods and supplies from overseas traders and manufacturers, which are never paid for. Allied with this, is the practice of printing bank stationery, carving bank rubber stamp, and use of fake letter-headed paper. The effect of all these, is that when genuine transactions are undertaken, they become suspect. The fear of losing out to dupes, generates a sense of insecurity in foreign business interests who as a result, are reluctant to do business with Nigeria.

Another area of banking fraud which is now of growing concern has to do with fake tested international telexes, and the wrongful interception of genuine ones, purporting the authorisation of transfer of funds. The effect of this kind of criminal malpractice has certainly been the loss of large sums of moneys by the banks and their customers, and above all, the engendering of a credibility problem. Presently, large scale computer frauds by outsiders against Nigerian banks, is still quite unknown. There are no widespread reports of banks having been infiltrated. This may be because the element of computerised banking is, relatively speaking, in its nascent stage in Nigeria. It can thus only be hoped that Nigerian banks will do their utmost to guard against this form of sophisticated malpractice by adopting appropriate measures in this regard.

Finally, the element of corruption which afflicts the larger society has not passed by the banking industry. A glance at section 43, of the Banks and Other Financial Institutions Decree, 1991, becomes a pointer to the prevalence of this evil within the banking system. That section, prohibits any director, manager, officer or employee of a bank from asking for, or receiving any gift, commission, employment, service, gratuity, money, property or thing of value for himself or any of his relations. This provision is a reaction to, or to put it the other way, a mere acknowledgement of the existence of a wholesale malpractice by which people

influence banks staff. The object of providing bank staff with inducements, whether in cash or kind, is often to procure loans, advances, or credit facility from the bank. It may also be done with the object of securing permission to overdraw an account with the bank, without proper authority or compliance with rules and guidelines for that purpose. Another reason for engaging in such corrupt practices is the desire to have negotiable instruments discounted or to have any other obligation by the bank tampered with, positively or negatively in favour of any person. This may include bringing about the "sudden disappearance" of documents relating to a loan transaction with a view to having it written off as bad debt.

All these represent various shades of malpractices committed within the banking industry by outsiders, that is to say, by non-bank staff. However, as pointed out in the course of this discourse, it is not possible in the strictest sense to isolate these practices and have them classified as non-bank staff malpractices. This is because it is not really possible for an outsider to just stroll into a bank and defraud it of money. There is always an element of internal assistance offered, either by way of active or passive connivance by bank staff.

MALPRACTICES BY BANKS: CIRCUMVENTING POLICY GUIDELINES

Among the principal kinds of malpractices perpetrated by banks, are the breach of Central Bank policy guidelines. These guidelines may be in relation to credit policy, interest rate policy, foreign exchange, cash reserves, and investment policy among others. Pursuant to its powers under sections 16 to 22 of the Banks and Other Financial Institutions Decree 1991, as well as under section 28, of the Central Bank of Nigeria Decree, 1991, the Central Bank of Nigeria exercises various forms of control over other banks within the Nigerian banking system through its policy guidelines.

Central Bank policy guidelines cover such areas like aggregate credit ceiling, sectoral allocation of commercial and merchant banks loans and advances, structure of commercial and merchant banks assets, as well as loans to rural borrowers. Other areas include loans to small scale wholly Nigerian owned enterprises, grace periods on loans for agriculture, loans for residential buildings, and reserve requirement. Additional areas that attract guidelines include interest rate policy, capital funds adequacy, bank equity holding in companies, banks obligations, and foreign guarantees and currency deposits as collaterals for naira loans.

With so many guidelines, and even much more regulations put in place by the Central Bank, merchant and commercial banks more often than not, take steps to evade some of these guidelines with a view to making higher profits. Accounts abound of banks having been blacklisted by the Central Bank for violating foreign exchange guidelines. The recent decision of the Central Bank to appoint First Bank, Union Bank, and United Bank for Africa, as designated banks to receive foreign exchange from bureaux de change was informed by the need to rid the system of the massive fraud and corruption that has overtaken it. At the maiden official foreign exchange sale of the year 1994, twenty-two banks were found to have applied for far more foreign currency than their customers demanded. Three banks, for instance, applied for between ninety-five and one hundred and fifteen million dollars when their customers requested for between thirty and forty million dollars. Such excess foreign exchange eventually get diverted to the parallel market where they are sold at twice the official rates. The Central Bank has confirmed that such banks may be banned from bidding for foreign exchange for the rest of the year.[8]

particular piece of legislation, is, thus, both unique as well as complementary of other banking laws ever enacted. It is the Bank Employees Etc. (Declaration of Assets) Act, Cap 27, Laws of the Federation of Nigeria, 1990.

Bank Employees Etc. (Declaration of Assets) Act

Faced with the high incidence of economic crimes, but more particularly banking frauds and other malpractices, the Government, in 1986, came out with the Bank Employees Etc. (Declaration of Assets) law. The philosophy underlying this law, is to ensure that bank staff live within their means. The inevitable presumption being that whosoever is found to indulge in a life style, or in possession of wealth over and above what may legitimately be ascribed to him, should be investigated for possible involvement in malpractice.

By virtue of section 1 (1), of the Act, every employee of a bank should within fourteen days from September 26, 1986 (commencement date of the Act), make a full disclosure of all his assets. New employees, were required to comply with this stipulation, within fourteen days of their assuming duty with the bank. For purposes of this requirement, sub-section (2) treated a transfer or secondment from one bank to another as being a new employment.

The definition of "employee" or "employee of a bank" contained in section 15, of the Act, includes the Governor, the Chairman, and members of the Board, Managing Director, Director, General Manager, Manager, Examiner, Inspector, Controller, Agent, Supervisor, Officer, Clerk, Cashier, Messenger, Cleaner, Driver, and any other category of workers of the Central Bank, a bank or other financial institution of whatever title or designation, whether general or peculiar to the bank. The section further made it clear, for the avoidance of doubt, that the term "employee" or "employee of a bank" includes a person engaged as a part-time, casual or temporary worker. Either expression, also includes any worker deployed to work in any branch or office of the bank in or outside Nigeria. By taking in every class of person who may be associated with the bank as its staff, the Act ensured that no one is left out, as indeed anyone may be tempted to commit one malpractice or the other, his category of employment notwithstanding.

Malpractices and contraventions committed by bank staff deployed abroad are similarly covered. This is discernible from the Act, as it includes in the definition of "employ" or "employee of a bank", persons deployed to any branch office in or outside Nigeria. The justification for this, is that in accordance with rules of international law, such persons are covered by Nigerian law, either because their acts engender consequences in Nigeria, or because they are nationals of Nigeria. Still by virtue of the principles of international law, any enforcement of the law against such persons can only take place when they come within jurisdiction. Presumably, such persons may face action under the laws of the host country if their actions engender consequences in that country.

The full disclosure of assets required under section 1, should be made in Form A, which is a schedule to the Act. The declaration should be executed before, and attested to, by the Registrar of a High Court, the Court of Appeal, or the Supreme Court. Just like the definition of "employee" given in the Act, the definition of "assets" which must be declared under Act, is quite comprehensive. Accordingly, "assets" include all kinds or property, real and personal, movable and immovable. The generality of the definition notwithstanding, section 15, goes further to describe "assets" as including land, whether developed or undeveloped, buildings, factory, workshop, warehouse, ships, aircraft, motor vehicle, furniture, household goods and electronic equipment. Others are farms, stock-in-trade, stocks, shares, debentures, treasury

ROUND TRIPPING OF FUNDS

This is yet another form of malpractices indulged in by banks. It is a system of practice by which a foreign bank would guarantee a local loan for a local project. This is to say, that a foreign bank guarantees the grant of loans denominated in naira on the security of a foreign guarantee or foreign deposits held abroad or in domiciliary accounts with Nigerian banks. Then, both the Nigerian and foreign bank will team up to defraud. Ordinarily the local project to be financed by the local naira loan will be selected. The Nigerian bank grants the local naira. Import of project related requirements is undertaken, and thereafter the project is abandoned. Once the failure of the project is notified, the Nigerian bank will request its collaborator bank abroad to remit its guaranteed amount of foreign exchange. The foreign exchange remitted, is then sold in the parallel market at high rates by the Nigerian bank. After deducting its profit, the Nigerian bank remits back, through local purchase of foreign exchange, its money to the foreign bank. All parties then share the remainder profit in excess of the original sum guaranteed in foreign exchange.

The fraud entailed is that the so-called foreign guarantee does not result in any real foreign investment in Nigeria to the foreign banks involved. This practice was thus abolished by the Central Bank through its Monetary Policy Circular No. 23 Amendment No. 3 of April 1989. The apex bank reaffirmed this tough policy approach, in 1990, under the credit guidelines which provided the following penalty:

> *In line with the Monetary Policy Circular No. 23 Amendment No. 3 of April, 1989, no commercial and merchant bank or any financial institution shall, in 1990, grant loans denominated in naira on the security of foreign guarantees and/or foreign deposits held abroad and/or domiciliary accounts with Nigerian banks. Any bank or non-bank financial institution which breaches this directive shall be made to deposit with the Central Bank an amount equivalent to the loan principal so granted. Such deposits which shall be non-interest bearing, and in the case of banks, non-liquid assets for the purpose of calculating the statutory liquidity ratio, shall remain with the CBN for as long as the loan remains on the banks loan portfolio but shall in any event, be held for a period not less than three months.*[9]

What is given above represents only a fraction of the various malpractices indulged in by banks. Many banks for instance, resort to window dressing, falsification of statutory returns, and the use of off-balance-sheet items to conceal relevant information about their operations. This state of affairs has often led to increased difficulties for the Central Bank in getting vital information appropriately desired for enforcing regulations.

LEGAL AND INSTITUTIONAL FRAMEWORK FOR COMBATING BANKING MALPRACTICES

Legal Framework

Beginning with the Banking Ordinance 1952, statutory enactments such as the various Banking Acts of 1958, 1969, and the Banks and Other Financial Institutions Decree 1991, have always contained the bulk of legal rules that regulate banking sector. One particular Act, however, expressly addresses itself to the combat of malpractices in the banking sector. This

certificates, saving bonds, interest and dividends. The comprehensive nature of this definition, leaves nothing to chance or speculation. Whatever, therefore, that can be acquired and owned by man, being material, qualify as assets.

The disclosure of assets by bank employees under the Act, is not limited to what the employee owns in his own right. It includes whatever is held by him in trust for other persons. This does not however include a wife or husband. An employee, is similarly required to disclose the assets of his wife or husband or children within and outside Nigeria, including those in which he, his wife or husband or children has an interest. By virtue of section 6, the Secretary to the Federal Government is empowered to cause the verification of every initial declaration made, including annual redeclaration required under section 4, of the Act. He may also direct an investigation into the assets and activities of the employee, including the assets and activities of a spouse, child, relative, parent, associate or privy.

Section 4 (c), enacts that the obligation of an employee to make an annual declaration of assets extends to a period of two years after the determination of his employment with the bank. It shall also be his responsibility to ensure that he makes his declaration, and submits same through the bank whose service he left, within the time stipulated in sub-section (1), of the section.

The Act created a series of offences. One such offence, is the offence of "unjust enrichment" created under section 7. Accordingly, it is an offence for a bank employee to own assets in excess of his legitimate, known and provable income and assets. Furthermore, for the purposes of computation of assets, or in determining the assets of an employee, any gift, bequest, donation or fraudulent, fictitious or artificial transaction made by the employee during the relevant period shall be treated as forming part of his assets. The income and assets of an employee includes salaries, allowances, returns on investments, gifts, donations, bequests received by him. The expression "fraudulent, fictitious or artificial transaction" used in section 7 (4) in relation to the offence of unjust enrichment, refers to a disposal or purchase of assets by an employee of a bank at a price below the market value of such assets. Such a disposal or purchase must be in a manner or circumstance that it can be reasonably inferred that the parties could not have been dealing legitimately, or that there might have been some other consideration for the transaction.

In relation to declaration of assets, it was also made an offence, under section 8, for any bank employee to knowingly fail to make full disclosure of his assets and liabilities, knowingly make a declaration that is false, knowing same to be false in part of or in whole. Similarly, failure to answer any question contained in the appropriate declaration of assets form under the Act constitutes an offence. Failure, neglect or refusal to make a declaration as required under the Act, amounts to an offence punishable by a ten year jail term.

Fronting, is yet another offence created by the Act. Any person who acts as a front for an employee of a bank, or does, or omits to do anything, or acts in a manner likely to defeat the objects of the Act commits an offence punishable by a seven years term of imprisonment, as provided for under section 9. Additionally, the section provides that any person who unlawfully acquires, disposes, operates, own or retains any assets for or on behalf of any employee of a bank commits an offence for which a seven year jail term shall be imposed upon conviction. In addition to the seven year jail term prescribed for the offence of fronting, section 9 (2) adds that the assets in question shall be forfeited to the Federal Government.

A person is deemed to act as a front if he does either of the following: Firstly, he accepts a gift, donation, or bequest from an employee of a bank on the understanding, or in circumstances, in which it could be inferred that such gift, donation or bequest was intended to

be held on behalf of, or in trust for or for the use of the employee, his spouse, children, parents, relatives, associates or privies. Secondly, he knowingly enters into a fraudulent, fictitious or artificial transaction with the employee.

Section 10 creates offences relating to the Foreign Exchange Market. By virtue of the section, anything done by any person whether he be a bank employee or not, calculated to prejudice or prejudicial to the effective operation of the Second-Tier Foreign Exchange Market,[10] (now simply called Foreign Exchange Act – Forex), is an offence. The Secretary to the Federal Government is empowered, upon his personal satisfaction, to direct that a thorough investigation should be conducted into the assets of such person including, but not limited to his spouse, child, relative, parent, associate or privy. Prejudicial acts include hoarding knowingly or refusing to sell foreign exchange, or doing anything which constitutes an offence under the Foreign Exchange Market Act. An offence related to foreign exchange under the Act, is punishable by a ten year jail term. In addition, any asset found to have been illegitimately acquired shall be forfeited to the Federal Government.

Section 11, deals with offences relating to importation and exportation of goods and products. Under the section, any person who forges, falsifies or alters any banking, customs or shipping document, including but not limited to letters of credit, whether confirmed or unconfirmed, bill of lading, and invoices relating to the importation or exportation of goods, products or any article whatsoever, shall be guilty of an offence. Any person convicted under the section, shall be punished with a ten year jail term, and any asset found to have been illegitimately acquired shall be forfeited to the Federal Government.

The power to try an offence under the Act is vested in a Special Tribunal established under the Exchange Control (Anti-Sabotage) Act. All the offences enumerated above, though triable under a Special Tribunal, are appealable. In this regards, it may be pointed out that by virtue of section 12 (2), the provisions relating to appeals and confirmation contained in the Recovery of Public Property (Special Military Tribunals) Act,[11] apply, *mutantis mutandis,* with provisions of the Act.

Finally, though the Act is essentially directed at bank employees, by virtue of section 13 (1), the scope of its application has been extended to other persons. Accordingly, the provisions of the Act apply to the Director, Deputy Director, Assistant Director, Chief Collector, Principal Collector, Collector, and other officer, staff or employee of the Department of Customs and Excise, in the same manner as they apply to a Chief Executive or an employee of a bank. Section 13 (2) provides that the President may, by an instrument published in the Federal Gazette, direct that the provisions of the Act be applied to any other person, class of employees, institutions or bodies either in the private or public sector of the Nigerian economy.

FAILED BANKS (RECOVERY OF DEBTS AND FINANCIAL MALPRACTICES) DECREE, 1994

This enactment is the most recent piece of legislation in the concatenation of laws designed to combat banking frauds and allied malpractices. The upsurge in the proliferation of banking institutions since the mid 1980s has given rise to a situation wherein many unviable banks dot the economic skyline of the country. It is little wonder that these banks, lacking in strong asset base and managerial resource soon acquire the status of "distressed banks". The resultant loss and hardship inflicted on depositors and sundry creditors when banks collapse occasioned the promulgation of the Decree. The pith and substance of this decree is the desire to hold directors and senior management of failed banks liable for the failure of their bank. The knowledge

that they could be made to assume personal liability for any fraud or mismanagement that contributed to the failure of a bank, it is presumed, will engender prudence and a higher sense of responsibility in directors and senior management staff of banks.

The efficacy of this piece of legislation has not been tested, and one can only hope that the efflux of time will demonstrate the deterrent propensity of this law.

INSTITUTIONAL FRAMEWORK

Institutional framework for combating banking malpractices refers to the key organs of state that play vital administrative, detective and investigative, as well as adjudicatory roles in the quest for eradication of banking frauds and diverse malpractices. The Central Bank of Nigeria, is the apex banking institution vested with authority, and charged with the full responsibility of supervising the nation's banking system. In the discharge of this role, the Central Bank, the police force, and the judiciary play complementary roles. Together, they employ methods that are administrative, detective and investigative, as well as adjudicatory in a bid to give effect to the legal framework of regulatory legislation enacted in connection with banking matters. The desire to achieve a stable and viable banking system capable of protecting the assets of the depositing public, as well as generating overall confidence underlie the institutional base of banking regulation in Nigeria.

ADMINISTRATIVE INSTITUTIONAL REGULATION

The approaches to combating banking malpractices which are adopted by the Central Bank are varied. They include appointment of a Director of Banking supervision under section 30, of the Banks and Other Financial Institutions Decree, 1991. Through this officer who is assisted by officers designated as examiners, the Central Bank periodically examine the books and affairs of each bank to ensure compliance with the law. In order to prevent, and detect any malpractices by banks, these examiners have power to require from directors, managers, and officers of banks, such information and explanation as they deem necessary. Additionally, examiners have a right of access at all times to the books, accounts, and vouchers of banks. Furthermore, the Governor of the Central Bank is empowered under section 32, of the Banks and other Financial Institutions Decree, 1991, to order a special examination or investigation of the books and affairs of a bank where he is satisfied, *inter alia*, that the bank has been carrying on its business in a manner detrimental to the interests of its depositors and creditors. Indeed, it was as a result of the invocation of this power that the Central Bank earlier on classified some banks as "distressed", and began a process of revoking their licences, and suspending those of what it described as "ailing" banks. The Central Bank has even taken-over some banks whose management it vested in the Nigerian Deposit Insurance Corporation.[12]

Bankrupts, and other fraudulent persons who are most likely to run the affairs of a bank dishonestly, and who are certain to indulge in malpractices are prevented from doing so by the Central Bank. The bank does this through denying such persons the opportunity to manage bank affairs, by virtue of its powers under section 44, of the Banks and Other Financial Institutions Decree, 1991. This section embodies the power of disqualification and exclusion of certain persons from the management of banks. Accordingly, no person shall be appointed or shall remain a director, secretary, or officer of a bank, who, *inter alia*, is a bankrupt, or is convicted of any offence involving dishonesty or fraud, or is guilty of serious misconduct in

relation to his duties. Similarly, any person whose appointment with a bank has been terminated or who has been dismissed for reasons of fraud, dishonesty or conviction for an offence involving dishonesty or fraud shall not be employed by any bank in Nigeria. Banks operating in Nigeria are thus required under section 44 (1), to seek and obtain Central Bank approval for the proposed appointment of any director or chief executive.

Other institutions that play vital roles in the smooth administration of laws designed to prevent and detect banks malpractices include the Nigeria Police Force. The police as a national institution is charged with the prevention, detection and investigation of crimes, as well as the prosecution of criminal suspects. Where, thus, fraud or other malpractices occur with the banking system, it is the duty of the police to investigate and prosecute all those connected with the offence so committed. The Banker's Committee is yet another body that assist in the quest for a clean banking system. The Secretary of the Banker's Committee maintains a register of terminated, dismissed or convicted bank staff on the grounds of fraud or dishonesty. Banks often apply to, and obtain prior clearance from the Secretary of the Banker's Committee in respect of persons, being senior officers, moving from one bank to another. The extent of the importance attached to the character and reputation of high officials is well demonstrated by section 44 (6), which makes it an offence punishable with N50,000 fine, or a jail term of not less than five years, or both, in case of a default. An offence will be deemed to have been committed in this regards, where a bank is proved to have employed a disqualified person. In such a situation, both the bank and its office or officers responsible for the appointment of such a person will be held liable, jointly and severally.

The Nigerian Deposit Insurance Corporation is one more institution involved in the regulation of banking business. It is the watchdog, of the banking industry, with the role of insuring depositors assets with banks. In the event of the Central Bank being satisfied that it is in the public interest to take over the management of an ailing bank, or to order its liquidation, the Governor of the Central Bank may appoint the Nigerian Deposit Insurance Corporation as the official receiver or as provisional liquidator. When so appointed, the Nigerian Deposit Insurance Corporation, shall by virtue of section 38 (3), of the Banks and Other Financial Institutions Decree, 1991, have the power conferred by or under the Companies and Allied Matters Act, 1990, and shall be deemed to have been appointed a provisional liquidator by the Federal High Court for the purpose of the Companies and Allied Matters Act.

The office of the Secretary to the Government of the Federation also plays a vital role in connection with the verification of declaration of assets by bank employees. Under sections 6 and 10, of the Bank Employees Etc. (Declaration of Assets) Act, the Secretary is empowered to direct thorough investigation into the assets and activities of a bank employee, including the assets of his spouse, relative, parent, associate or privy.

Finally, at the apex of institutional regulatory framework, stands the Court of Justice. By virtue of section 48, of the Banks and Other Financial Institutions Decree, 1991, it is enacted that: "Notwithstanding the provisions of this Decree or of any law, the Federal High Court or tribunal constituted under any enactment shall have jurisdiction to try any offence under this Decree and to impose the full penalty prescribed therefore"

FUNCTIONAL INSTITUTIONAL REGULATION

The quest for eradicating banking malpractices reflects itself in rules that stem from certain functions of the Central Bank. Being the banker to other banks, the Central Bank decides on what amount of overdraft it can allow each bank in a given situation. The Banker's Committee

also serves as a forum for meeting other banks and advising them on how to avoid pitfalls, and improving efficiency without having to resort to malpractices in case of temporary difficulties. The apex bank also use its supervision of the cheque clearing houses to monitor the activities of banks.

The monitoring of bank activities is intended to ensure their compliance with regulations. These regulations, of course, include those designed to prevent and also to detect malpractices. The first method employed by the Central Bank to achieve this objective, is the appraisal of each bank's statutory returns to the Central Bank, required under section 25, of the Banks and Other Financial Institutions Decree, 1991. Such appraisals assist the Central Bank to make representations, and recommendations to Government on policy matters affecting the banking industry. The second method is that of examination of bank books and records to ensure compliance with regulation set out for banks in statutes, as well as the Central Bank's own guidelines. In the course of its supervision of banks' affairs, the Central Bank may detect defaults which are usually penalised. Penalties include fines, the confiscation of credit excesses or shortfalls as the case may be, and the withdrawal of some privileges which the Central Bank accords licensed banks within the banking system, from time to time.

ACHIEVING A CLEAN BANKING SYSTEM – CAN LAW ALONE SUCCEED?

The motives behind the enactment of various laws that touch upon the field of banking in Nigeria are essentially to achieve an orderly and stable banking system devoid of fraud and malpractices that weaken public faith and confidence in the nation's banking sector.

One Act that specifically directs itself to the issue combating frauds and malpractices committed by banks' staff is the Bank Employees Etc. (Declaration of Assets) Act. The motives behind the enactment of the law must be applauded as noble and timely. Indeed, Professor Eze[13] described it as "a good piece of legislation", and "its intendment is very positive". Two features of the Act commend it as a law with a mission, and makes it difficult to resist Professor Eze's view of it.

Firstly, the stiff penalties provided for offences under the Act, potray it as an uncompromising weapon for fighting banking frauds. Long jail terms are prescribed for convicts under the Act, the least of which is seven years, prescribed in connection with the offenoe of fronting under section 9. Secondly, a conviction under the Act, attracts an immediate forfeiture of all assets illegitimately acquired. What this means is that no convict under the Act can get away with a fine, only to sit back and enjoy his loot. The additional element of forfeiture signals the futility of engaging in such malpractices, and is, therefore, capable of deterring real and potential fraudsters.

Still on a positive note, the application of the provisions of the Act to the Department of Customs and Excise, and to other persons or institutions as the President may direct, if properly implemented, is welcome, and progressive. The commonly held view is that the nation's Department of Customs and Excise is corrupt and prone to fraud especially in relation to port activities. If, therefore, officials and other staff of the department are made subject to such a law as the Act, then it is a positive development in the national interest.

All said, it is still possible to criticise the Act for its inherent negative features. Foremost in this regard, is the vesting by the Act, of the authority, and power of initiating the investigation of declaration of assets in the Secretary to the Federal Government. The office of the Secretary to the Federal Government is a political one. To vest such powers in an official who ordinarily must be pre-occupied with matters of politics and civil service administration is

quite inappropriate. Ordinarily, the Central Bank should have been the proper authority to undertake the task, being the apex bank with supervisory responsibility over other banks. However, since its own staff come under the purview of the Act, and must themselves disclose their own assets which may be subject to investigation, it is submitted that the creation of special independent organ charged with this responsibility under the law, would be a better option.

The Act may be criticised for its limited interpretation of the meaning of "bank". Section 15, of the Act defined "bank" in the following terms, "bank" includes the Central Bank of Nigeria, commercial banks, merchant banks, acceptance houses, discount houses, financial institutions or any other authorised dealer appointed under the Second-Tier Foreign Exchange Market Act". The definition clearly omits from its ambit certain present day banking institutions recognised under Nigerian banking law. For instance, section 61, of the Banks and Other Financial Institutions Decree, 1991, recognised "Profit and Loss Sharing Bank", as well as "Community Banks" as distinct categories of banks with separate identities from ordinary commercial banks. It cannot be said that employees of these omitted banks cannot indulge in banking malpractices. The definition therefore should be amended to reflect these later day categories of banks.

Furthermore, section 51 (1), of the banks and Other Financial Institutions Decree, 1991, makes clear that certain banking institutions, are, for purposes of the banking law, not classified as ordinary commercial banks, or merchant banks. In other words, they constitute a class by themselves. These banks are: Nigerian Industrial Development Bank Limited, Federal Mortgage Bank, Nigerian bank for Commerce and Industry, Nigerian Agricultural and Co-operative Bank Limited, and the fund established under the National Provident fund Act. No mention of these institutions is made under the definition of "bank" contained in section 15, of the Bank Employees Etc. (Declaration of Assets) Act. Certainly these are banking institutions that handle enormous business given their specialised nature. Their employees should be adequately covered by the law, and, therefore, be made to declare their assets like all the other bank employees.

Research did not produce any evidence of cases prosecuted under the law. Apparently, the first and only declarations were made in obedience to the law after it was first enacted. Since then, there appears to be no follow-up action. Two interpretations of this situation of things become possible. Firstly, that the law is being faithfully obeyed, and, therefore, Nigerian bank employees do not engage in malpractices that result in dishonest enrichment of themselves, or others such as their relatives, associates and privies. Secondly, that the Secretary to the Federal Government, as the "appropriate authority" charged with responsibility of initiating investigation of declaration of assets under the Act, as well as checking the commission of any act prejudicial to foreign exchange market law under the Act, has failed to properly discharge his obligation. If the latter view is correct, as it is submitted, then it reinforces the earlier criticism of the choice of the Secretary as "appropriate authority". The appropriate measure would require the setting up of an independent organ charged with the responsibility of investigating and monitoring matters related to the investigation of declaration of assets by bank employees. Members of such an organ may themselves be subject to the public service code of conduct.

Banking malpractices are not peculiar to any one nation. Frauds and malpractices, by whatever name they are called, are a worldwide phenomenon in banking systems. The collapse of the high profile Bank of Credit and Commerce International, attests to this.

Since majority of Bank frauds become successful as a result of internal control lapses, it is certain that enacted legislation alone cannot rid the system of diverse frauds and malpractices

now prevalent. It is therefore imperative, that human frailties be fully identified and understood while at the same time, loopholes, legal and administrative, be properly plugged before they are exploited, used and abused. Internal control of banks entail an understanding of the organisational structure and plan, and such approved co-ordinated modes and methods employed to safeguard assets, check accuracy and reliability of data, promote staff efficiencies, and response to approve managerial policies. Given the above factors, it is submitted that the efficacy of any anti-malpractices guidelines must be rested on two major forms of internal controls, viz: application controls, and general controls.

APPLICATION CONTROLS

The concept refers to the technical term employed in accounting. Application controls are fundamental controls over the entirety, accuracy and validity of accounting information. They are so called by accountants because they are germane to particular accounting applications such as the bank's processing of the disbursement of loans and advances, or the preparation of staff payrolls. Sub-categories of application controls include: physical, arithmetical, accounting controls, and authorisation and approval.

Physical controls are concerned with the safe keeping of assets, and involve procedures and security measures designed to ensure that access to assets is limited to authorised persons. This takes in both direct access, and indirect access by way of documentation. These controls assume higher significance in the matter of valuable, portable, exchangeable or desirable assets.

Arithmethical and accounting controls are the controls within the recording function which check that all transactions to be recorded and processed have been duly sanctioned, that nothing is left out, and that they are correctly entered and accurately processed. Such controls include checking and ascertaining the mathematical accuracy of records, the maintenance and checking of total balances, reconciliations, control accounts and trial balances, and accounting for documents.

Authorisation and approval, emphasises the need for all transactions to require clearance or approval by designated persons. The limits for transactions should, therefore, be clearly spelt out in all circumstance.

GENERAL CONTROLS

General controls by their very nature are those that determine the milieu within which other forms of controls operate. They include organisation, segregation of duties, personnel, supervision and management.

Within each banking establishment, there should be a plan of the organisational structure of the banking system so as to ensure proper definition and assignment of responsibilities, and identification of reporting hierarchy for all aspects of the operations of a bank, including controls. The delegation of responsibility and authority should be clearly defined.

Segregation of duties is a cardinal means of control. It emphasises the individualisation of those responsibilities or duties which would, if combined, enable one official to both record, and process a complete transaction. Segregation of duties reduces the risk of internal manipulation or error, and increases the element of checking.

With regard to personnel, there should be procedures to ensure that all bank staff have the requisite capabilities in terms of education, training and experience commensurate with their

responsibilities. Inevitably, the proper functioning of the banking system depends largely on the totality of staff integrity, competence and dedication to duty. It is, therefore, submitted that the qualifications, selection, and training allied with the innate individual characteristics of the personnel involved are vital features to be adequately considered, and safeguarded if a control system is to serve its function which includes fraud detection.

Supervision requires that any system of control should reckon with, and must embrace the overseeing by responsible officials of diurnal business, and the proper recording.

Finally, management controls are the controls exercised by management outside the diurnal routines. Such controls include the overall supervisory controls exercised by management. The review of management accounts and comparison thereof with budgets, the function of the inspectorate division, and any other special review procedures.

In order, therefore, that a clean and efficient banking system devoid of widespread frauds and malpractices be attained in Nigeria, a reassessment and monitoring of modalities for sustaining the above components of control is advocated. The desirability of revisiting these components of control may be illustrated thus, in respect of general controls.

In the absence of general controls, or where there are defects, and other loopholes there is bound to arise reservations and uncertainty as to whether application controls have been properly applied. For example, if a bank's staff member is incompetent or derelict in the discharge of his functions, nobody will be confident when his initials or signature appears on a document. Other diligent staff may develop or entertain fear since they cannot be certain that he properly carried out the procedure his signature or initials are intended to evidence. A general control – "personnel" – is thus lacking. Similarly, if the staff member responsible for checking the accuracy of records of stock of unused cheque booklets, is also responsible for the physical safe custody of the booklets, again his colleagues may have difficulties placing confidence on him to promptly report any loss for which he may be blamed, and made answerable. A general control – this time, "segregation of duties" is lacking. Where the application control hinges on a procedure within a computer programme, it may not be asserted with certainty and confidence that the correct and authentic version of the programme has been applied to the data if the programmer also operates the computer. Again a general control – "segregation of duties" – is lacking.

All in all, it is necessary to re-emphasise that banking frauds and other malpractices within the industry, by whatever name called, are a world-wide banking phenomenon. They are not peculiar to Nigeria. The eradication of banking malpractices in Nigeria is a continuous process. In the light of the enormous damage which these malpractices can inflict on the national economy, it is submitted that apart from legislative enactments which over the years have multiplied, and have been variously revised, special attention should be paid to operational guidelines. This will ensure adequate control of cash movement, all forms of bank book and records, as well as the recording of transactions without resort to falsifications and manipulations.

RECOMMENDATIONS

An Increase in Authorised Capital of Banks

An important motivation for the regulation of the setting up of new banks, is to prevent the entry into the banking system, of institutions with dubious reputation or insufficient and inadequate capital base. Before February 1991, the minimum share capital for setting up a

commercial bank was twenty million naira, and for a merchant bank, it was twelve million naria. From June 20, 1991, (the effective commencement date of the Banks and Other financial Institution Decree, 1991), the minimum share capital for commercial banks, became, by virtue of section 9 (2) (c), forty million naira. The effect of this was that investors who could muster the prescribed minimum amount, and satisfy other stipulated conditions could run a bank. By so doing, they could accept public deposits to the tune of one billion naira, and acquire diverse assets of up to the same amount. This position of things meant that investors could have access to public funds more than twenty times in excess of their own contributions. The temptation to abuse this access to huge funds has proved too strong as recent events unfolding in the banking sector now reveal.

The unregulated practices of the pre-regulation era of Nigeria banking history, no doubt assisted those factors that contributed to bank failures in the 1930s. These factors included, *inter alia,* under capitalisation of banks, inadequate and unqualified staff, inefficient management, structural handicaps, and expatriate intrigues. The rash of new banks established in recent years appears to be exhibiting some of these symptoms. Accordingly, it is recommended that the share capital of banks be increased in order to forestall the re-emergence of "mushroom banks" whose failure often result in all round miseries and hardships. When the capital requirement of setting up new banks is raised to say one hundred million naira, for commercial banks, and merchant banks alike, only genuine investors can be expected to enter the field of banking. Bank management will also not be left in the hands of persons of unproven competence and professional integrity. If accepted, and implemented, this recommendation will ensure the return to a new epoch of stability and reduced risks.

SETTING UP A NATIONAL BANKING CRIMES COMMISSION

The strategic importance of the banking system of any country to the economic well being of the nation cannot be over emphasised. The demands of a clean, stable, and viable banking system in Nigeria, therefore, require the setting up of a special banking crimes outfit. This outfit, should be administered as an autonomous body with full power of investigating bank frauds, malpractices, and other related economic crimes exclusive to the financial sector. It should also be made responsible for the administration of the Bank Employees Etc. (Declaration of Assets) Act. The Secretary to the Government of the Federation should no longer be the "responsible authority" for initiating the investigation of cases of declaration of assets by bank staff.

In order to ensure that the new body if, and when created should function effectively, it should be vested with an independent autonomous status akin to the National Law Reforms Commission, or the National Drug Law Enforcement Agency. This body should be composed only of competent, honest, experienced and dedicated personnel drawn from the following professions: Criminologist, Accountants, Computer Experts, and Lawyers. The lawyers should be experts in the law of banking, Finance, International Economic Laws, and Criminal Law and Procedure. All members of the Commission should be persons of recognised professional experience and competence, and should be appointed by the President of Nigeria by instrument under public seal. The Commission should be made up of a Chairman, Secretary, and five executive commissioners. Each appointee should hold office for five years in the first instance, and subject to good performance, be eligible for re-appointment for a second term of three years. This will allow for continuity while at the same time make room for new ideas from in-coming members.

The Commission should, in order that it may command respect and confidence of the nation, be responsible for appointing its own staff. Its administration should be kept completely out of the political arena. This requires exclusion from the Commission, of practising politicians, retired personnel from other callings, more especially the Nigerian Armed Forces, the police, and all categories of serving bank personnel, including those of the Central Bank of Nigeria.

Furthermore, in order to ensure that its utility, and effectiveness is not neutralised by police delays, all cases of banking and other financial malpractices should be prosecuted by a special unit within the Commission, charged with the responsibility of prosecution of cases. This unit should be manned by the Commission's own legal staff, who must be professional lawyers specialising in the area of criminal law and procedure. This unit can, if it deems it necessary, enter into a working arrangement with the police, and other intelligence or security outfits.

Other responsibilities of the commission should include the collection, collation, and dissemination of information on cases of banking frauds and other malpractices, including known members of the syndicate. Information on such highly placed citizens who are either businessmen, bankers soldiers, industrialists, and political or civil administrators who owe banks, and are not forthcoming in repaying, or are suspected to be in league with bank staff, should be exchanged through this commission. This is with a view to preventing such persons from borrowing further amounts from other banks, thus denying them direct or indirect use of banking facilities, by the nations' banking community. A proper legal backing should be given to this scheme so as to safeguard banks from litigation arising from any breach of the banker's duty of secrecy to its customer.

AMENDMENT OF THE LAND USE ACT

It is recommended that the provisions of the Land Use Act, be reviewed as far as they relate to land or other real estate, when used as security for bank advances. A review of the sort contemplated, will enable banks to overcome the present difficulties inherent in procedures for perfecting title to property pledged with them as security or collaterals for loans and advances. Furthermore, such simplification of the law as it affects banks will bring about a reduction or even the complete eradication of the incidence of collaboration between bank staff and prospective borrowers who collude to defraud banks, using as security, property to which they have only a defective or no title.

Special provisions may also be made in the law to permit the transfer of land, whether urban or rural, developed or undeveloped, to banks, as security without the cumbersome process of seeking the consent of State Governors, or Local Government Council Chairman. Instead, the consent of the National Banking Crimes Commission should be sought and obtained. This recommendation, if accepted, and implemented will also serve the additional purpose of ensuring that the Commission which is charged with ensuring a clean and healthy banking system, will keep close watch on fraudsters, and land speculators who may wish to defraud banks. Accordingly, an additional responsibility such as this, for the Commission, should be written into its mandate.

ESTABLISHMENT OF A NATIONAL BANKING COURT

The confessed importance of the banking sector to the national economy demands that legal

disputes involving banks, and their customers, or between banks and any other litigants, be resolved with despatch. It is, therefore, recommended that a National Banking Court be established to handle disputes involving banks. Accordingly, section 48, of the Banks and Other Financial Institutions Decree, 1991, which confers jurisdiction over matters arising in connection with that piece of legislation on the Federal High Court, or other Special Tribunal, be amended. The Federal High Court, as presently constituted may continue to exercise its other jurisdictions with the exception of banking and allied matters. The status of the National Banking Court should rank at par with that of the Federal High Court.

The jurisdiction of the National Banking Court should extend to cover all banks in Nigeria, including the Central Bank, as well as financial institutions covered by the Banks and Other Financial Institutions Decree, 1991. All cases coming before the court should be prosecuted only by specialist law officers from the legal department of the National Banking Crime Commission earlier proposed as part of the present recommendations. As an institution specially set up to dispense justice in banking and financial matters, judges appointed to this court should only be those with special knowledge of banking and economic laws.

CONCLUDING REMARKS

This paper has in a modest manner, put forward a conspectus of the legal and institutional frameworks for the regulation of banking business in Nigeria. It is certain that with minor modifications, the legal and institutional frameworks will continue to be adequate in providing a stable base for the conduct of banking business in the country. The most visible manifestation of the validity of the above assertion, is provided by the recently demonstrated vigilance of the Central Bank of Nigeria, in taking over the management of some banks, suspension of the licences of others, and outright revocation of those of yet some other banks. All these actions were taken pursuant to the apex bank's powers under existing laws.

The current laws on banking, represented by the Central Bank of Nigeria Decree, 1991, and the Banks and Other Financial Institutions Decree, 1991 coupled with the recent failed Banks Decree, 1994, embodies reasonably adequate provisions for the regulation of banking business in Nigeria. Between them, these laws provide a full range of legal guidelines that can, if properly observed, continue to guarantee a stable, and viable banking industry for the country. The answer to any momentary crisis does not lie in the enactment of more laws. In fact, the tendency today, is to move towards deregulation for greater efficiency and competitiveness, within reasonable controls.

Laws, however, are not in themselves the only solution to banking frauds and malpractices. A contributory factor to the rising incidence of economic crimes (including banking frauds and malpractices), is the acceptance of such criminals by the Nigerian society. This should not be the case. In view of the acceptance of the adequacy of existing laws, it is necessary to state categorically, that the simple but dutifully thought-out recommendations put forward above, are in effect aimed at further boosting the legitimate working of Nigeria's banking system. This goal can be achieved through the acceptance by the nation of the new institutional arrangements proposed. They hold out a light at the end of the long tunnel of appalling prevalence of aggravated vices which threaten the nation's banking and financial system. These vices are a sad heritage of the variant of capitalism adopted by Nigeria as the basis of its developmental strategy, with all its concomitant pressures for societal recognition.

If the simple but progressive recommendations contemplated above are not to prove a paper tiger, the cadres charged with their implementation and enforcement must have the right

orientation, correct grasp, and social activism. Failing this, all efforts aimed at achieving a clean banking system will end in a yawning implementation gap. Academic research efforts, and heroics in intellectual recommendations, will be meaningless if institutions, laws, and all those charged with their administration and enforcement are deficient in their roles. The salutary effect of well conceived measures will be lost and the total prevention of economic crimes unattainable.

The best legislative and institutional reforms must be backed by effective enforcement in the field. This submission is made in great earnestness, because many welfare legislations in Nigeria have remained cloistered virtues or slumbrous in effect. The larger interests of trade, commerce and economic prosperity demand that a clean, stable, and viable banking industry be preserved through legislative and institutional methodologies, at once dynamic, and reformatory, but always motivated and moderated by the felt necessities of the times. This done, the present will bequeath to the future, a banking legacy where banker and customer are united as partners in progress, in discharging their reciprocal obligations to one another, safe in the knowledge, that: "the purest treasure mortal times can afford, is spotless reputation"

NOTES AND REFERENCES

1. (1986) 3 NWLR 188.
2. Cap 59 Laws of the Federation of Nigeria 1990.
3. (1968) 1 ALR Comm 6.
4. (1911 – 13) All E.R. Rep 51.
5. Ibid at P.57.
6. (1971) 1 All NLR 256.
7. (1963) 1 All NLR 193; 5 NSCC 157.
8. The African Guardian Magazine, Vol. 9, No. 9, March 7, 1994, at page 10.
9. Central Bank of Nigeria: Credit Policy Guidelines for 1990 Fiscal Year (CBN Press, Lagos) 1990, page 18-19.
10. Cap 405 Laws of the Federation of Nigeria, 1990.
11. Cap 389 Laws of the Federation of Nigeria, 1990.
12. Recently, the Central Bank of Nigeria, made an example of two merchant banks – Kapital Merchant Bank, and Financial Merchant Bank, by revoking their licences, and suspending those of Republic Bank Limited, and Broad Bank of Nigeria Limited. The Management of five commercial banks were taken-over in May, 1993. Those taken-over were: African Continental Bank, Mercantile Bank, Pan African Bank New Nigerian Bank and Co-operative and Commerce Bank.
13. Eze, Osita C.; "Assets Declaration by Bankers: An Effective Check Against Criminality;" Being a paper presented at the seminar on banking and other financial malpractices held at the Institute of International Affairs, Victoria Island, Lagos, 24th-26th April, 1989.