



NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES LAGOS, NIGERIA



ROUNDTABLE ON THE ROLE OF FORENSIC AND INVESTIGATIVE ACCOUNTING: CHALLENGES FOR THE BANKING INDUSTRY

19th July, 2010

COMMUNIQUE

Introduction

In keeping with its mandate to contribute to the development of the law by focusing attention on topical, ground breaking and evolving areas of law through series of Round Table discussions, the Nigerian Institute of Advanced Legal Studies organised yet another successful and thought provoking Round Table on the 19th of July, 2010, on the pressing need for forensic and investigative accounting to support the effort at reducing criminality in the banking industry. The Round Table was timely and germane given the emerging social anomie and preponderance of fraud within the private and public sectors of the Nigerian economy. This is more so in the banking industry where the incidence of economic crime has persisted in increasing proportions despite attempts to combat same by law and administrative measures, with serious consequences for the industry as evidenced by the recent collapse of a number of banks.

It is against this backdrop that the Institute, under the auspices of the Chukwudifu Oputa Centre for Forensic Studies, convened the One-Day Round Table discussion with the theme "The Role of Forensic and Investigative Accounting: Challenges for the Banking Industry" which held at the Ayo Ajomo Auditorium at the Institute's Premises, Unilag Campus, Lagos.

Discussions at the Round Table were led by experts in the areas of accounting, law and banking, along the following perspectives: Overview of Financial Investigation and Forensic Accounting; the Role of the Forensic Accountant in a Criminal Investigation; a Legal Perspective of Economic Crimes and Fraud; the Relevance of Forensic Accounting in Detecting Financial Frauds; Banking Supervision and Financial Reporting Practice in Nigeria; Forensic Accounting: Reliability and Admissibility as Expert Witness. The Round Table had in attendance representatives of the Institute of Chartered Accountants of Nigeria (ICAN), the banking industry, the legal profession, the academia, the Press, and the general public.

Observations:

The Round Table made the following observations-

1. The practice of forensic and investigative accounting is well developed in other countries as a means of resolving crime; whereas, it is yet to take root in Nigeria.
2. There is a preponderance of economic and financial crimes in Nigeria which are largely undetected and unpunished. The Nigerian justice system in place has proved largely incapable of solving these crimes and ensuring that the perpetrators are adequately punished. This trend has turned Nigeria into a 'low trust' society with damaging consequences for capital formation through local capital mobilisation and foreign direct investment.
3. Economic and financial crimes are widespread in proportions that are comparable only with large scale official corruption in terms of impact on the Nigerian economy.
4. The prevalence of fraud in Nigeria has created a widely held notion at the international arena that Nigeria is a nation of criminals and fraudsters. This in turn has led to the decertification of Nigeria's electronic commerce, thus making electronic transactions requiring online payments cumbersome and difficult. Furthermore, persons of Nigerian nationality are being randomly denied visas to other countries, thus constituting 'economic genocide' on Nigerians.
5. The increasing need for forensic and investigative accounting in the banking sector is tied to the following factors:
 - Pervasive increase in deviant behaviour, resulting in higher rates of fraud in the banking sector;
 - Borderless societies resulting from globalisation, making geographical distance and boundary irrelevant as protection from criminals and fraudsters;
 - Obtuse, irresponsive, opaque laws and regulations with loop holes that the unscrupulous exploit;
 - Regulations that create monopoly of decisions in the hands of bureaucrats;
 - Growing interest in litigation as a means of dispute resolution;
 - The widespread use of digital technologies that have alternative traditional means of record keeping and retrieval, causing clients to now rely more than ever on specialist forensic experts to generate evidence needed to pursue cases;
6. The nature of modern-day banking involves large volume of complex data, which makes it difficult to monitor those transactions by applying manual audit processes. This in turn makes the control utility of auditing ineffectual.
7. Virtually all the weaknesses and challenges identified in the banking industry in Nigeria's post-consolidation, and criminal investigations and prosecutions arising from them, are issues for forensic accounting. Thus, in the current scheme of things, the legal profession and the banking industry require the services of forensic accountants to perform a variety of functions.
8. If well applied, forensic accounting could be used to reverse the leakages that cause bank failures and so enhance trust and development in the banking industry. This can be attributed to the fact that proactive forensic accounting seeks out errors, operational vagaries and deviant transactions before they crystallise into fraud. This could go a long way in preventing 'legacy crimes' where the perpetrator has tampered with the footprints and audit trails and left the organisation.
9. Forensic and investigative accounting skills are now required to uncover and establish the occurrence of financial crimes, and document evidence to support court processes such that culprits do not escape justice.
10. Forensic accounting provides the accounting analysis that is suitable to the court which will form the basis for discussion, debate and ultimately dispute resolution by focusing on both the evidence of economic transactions and reporting as contained within the accounting system of an organisation, and the legal framework which allows such evidence to be suitable to the purposes of establishing accountability or valuation or both.
11. Experience in forensic accounting engagements enables the forensic accountant to offer suggestions as to internal controls that owners could implement to reduce the likelihood of fraud, thus providing some sort of defensive mechanism. This way, forensic accounting helps organisations and countries to develop policies and procedures directed towards preventing fraud and criminality.
12. There are significant challenges to the practice of forensic investigation in Nigeria in the form of statutory, infrastructural and human capacity. One of such challenges is the Evidence Act, which hinders the admission of the evidence needed for the prosecution of cases before courts.
13. Banks are hurriedly put together without due consultations with relevant stake holders and experts. Moreover, banking licences are issued without proper investigation on the qualifications and integrity of the people running the banks.
14. The process of opening an accounting is porous and so allows for opening of accounts for fraudulent purposes.
15. There are loopholes in extant laws geared towards fighting economic crimes in the country. Thus, notwithstanding the proliferation of statutes directed towards regulating the banking sector and preventing fraud, the incidence of fraud and economic crime has not reduced to its barest minimum.
16. There is paucity of reliable, dependable and accurate data especially biometric data about citizens; hence, it is difficult to trace and apprehend criminals involve in electronically executed crimes.
17. Given the functions of the forensic accountant and investigator, it is imperative that a professional forensic accountant be equipped with skill sets. This calls for multidisciplinary knowledge and skills that must include basic knowledge of accounting, law, psychology, general business knowledge, criminology, and information and communications technology, among others. The need for eclectic approach also requires that professionals in these fields should cooperate with each other to fight fraud given the high degree of inter-dependence.
18. Courts also have an important obligation as gatekeepers in admitting or denying experts in cases.

19. All agencies involved in combating corruption and economic crimes should be strengthened in terms of human capacity to carry out their role.
20. The systemic and deeply embedded problem of corruption in Nigerian also affects the banking sector in Nigeria.

Recommendation

1. There should be coalition amongst those involved in forensic and investigative accounting including lawyers, accountants and other members of the public. Balkanisation of the profession should be avoided.
2. The subject of forensic and investigative accounting should be professionalised. In this regard, the necessary legal framework for regulating the practice of forensic accounting and investigations should be established, and where necessary, existing laws should be amended to address developments in this area.
3. Training of persons interested in the practice of forensic and investigating accounting, as well as continuing education for persons already in the profession should be provided in order to develop capacity in this area.
4. The public sector should be involved in the forensic accounting initiative in view of the fact that the government is the biggest spender in Nigeria's economy, is victim of most of the corrupt practices and therefore, needs forensic and investigative accounting support more than other stakeholders.
5. A selfless decision should be made at the intersection of accounting and law on the best way to organise forensic accounting and investigation as a composite profession involving different professions. In doing this, every effort should be made to eschew selfish group interest and allow national interest to prevail.
6. It should be determined early enough at what point professional certification should become a requirement for new entrants into the forensic accounting and auditing profession. In achieving this, a harmonised approach which insists on evident demonstration of expertise in forensic accounting and investigation and defines the required basic knowledge of law and accounting expected of professional should be adopted.
7. Tertiary institutions in Nigeria should engage and be encouraged at this embryonic stage of forensic accounting and investigation to develop curricula for forensic accounting and investigation as obtains in many universities outside the country.
8. The regulatory authorities in charge of the banking sector should be more effective and proactive in enforcing breaches. In this regard, there is need to put in place institutional arrangements to regulate actions of industry regulators and institutions seized with the responsibility of fighting crime in the country.
9. A 'duty of care' should be imposed on cyber café operators. To this end, cyber café operators should be required to register their customers so as to facilitate easy and effective investigation of fraudulent practices perpetrated via their internet facilities. Furthermore, technological measures should be utilised by online and internet service providers to pre-empt and abort fraudulent acts and transactions perpetrated with the use of their facilities.
10. Given the enormity of the economic and financial crimes committed and their complex nature, a multi-unit/agency approach to crime prevention should be considered. Such a system should be properly funded by the government; at the same time special care should be taken to avoid overlapping of functions and clash of authority.
11. The Money Laundering Act should be reviewed to reflect the current nature of banking practice in Nigeria vis-à-vis the perpetration of financial and economic crimes to ensure a more practicable role for the banking institution in mitigating financial crimes.
12. There is need to rotate responsibilities in any organisation to prevent employees from occupying a particular duty post for longer than necessary in order to avoid well coordinated acts of fraud by the staff of the organisation
13. Accounting or auditing firms should not be engaged by a particular organisation for an unreasonable length of time to avoid such firms collaborating with perpetrators of crimes from within or outside.
14. To guarantee the successful mitigation of economic crimes generally, and in the banking sector specifically, the malaise of corruption should be effectively addressed. In this regard, moral and ethical re-orientation is needed in the society in general to ensure that less value is placed on materialism, and material success through illegal means is abhorred.
15. There is need to ensure that the persons responsible for the training of forensic accountants have the requisite knowledge. Furthermore, forensic accounting should be a mandatory subject for professional examinations of the Institute of Chartered Accountants of Nigeria (ICAN) to provide basic knowledge of the subject to all accountants passing through the Institution.
16. There is need to establish and structure necessary legal framework for forensic accounting and investigation.
17. There is also need to coalesce forensic and investigative accounting and auditing efforts. Furthermore, the relevant laws should provide that where possible, membership of Audit Committees of public companies should include a forensic accountant.
18. The Evidence Act should be amended such that the definition of 'document' includes electronically generated document in order to make forensic evidence admissible in the prosecution of banking offences.
19. With specific reference to the banking sector, the following measures should be adopted:
 - As a deliberate policy, the CBN should ensure that forensic accountants are used in the investigations and prosecution of bank officials involved in banking fraud;
 - The Bank Supervision Department and other relevant departments of the CBN should have adequate number of forensic accountants to ensure that the accounts of banks are properly inspected, supervised and audited. Furthermore, the CBN should ensure the training and re-training of its banking supervision staff to ensure that they are abreast with developments in forensic accounting;
 - The maximum period for the appointment of external auditors for banks should be reviewed downward in the first instance to ensure that their independence is not compromised;
20. Institutions and organisations should be encouraged to expose their staff heading key departments like legal, accounts and ICT to basic training on forensic accounting and investigation.
21. The development of professional standards, code of ethics and best practice guidelines for forensic accounting and investigations should be embarked upon.
22. Crime is universal; thus, it is imperative for Nigeria to manage her public relations in order to quell the notion that Nigeria is the most corrupt nation on earth. It is also important that Policy makers work towards improving Nigeria's current image as a Nation of criminals at the international arena.

Signed:

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