



The Legal Luminary

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Chioma N. Momah

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Merry Christmas and Happy New Year...

Christmas is a season for kindling the fire for hospitality in the hall, the genial flame of charity in the heart.
-Washington Irving



NEWS

A helicopter crashed in Bayelsa state on the 15th of December 2012 killing its six occupants including Kaduna Governor Patrick Yakowa and former NSA Gen. O. A. Azazi.

The Senate has approved a total of \$7.109bn for the federal and state governments under the 2012-2014 MTEF.

A mid-day fire erupted at the MMF airport on the 20th of December 2012.

Plots to attack Churches, Telecom installations uncovered by FGN.

Zain and MTN Offices in Kano attacked by bombers on 15th December 2012. The only casualties were the bombers.

From the Editor!

Welcome to another edition of the premier and only e-newsletter in the Corporation "the Legal Luminary".

This year has been exciting and its amazing that we are already at the end.

In this edition one of our in-house Counsel A. E. Anyadiegwu Esq writes on Financial Crimes in Nigeria it's a two part series and will be continued in the next edition.

We would like to use this opportunity to appreciate our esteemed readers, your comments and questions have inspired us month after month. We promise that in the New Year this newsletter will be "bigger and better" with richer content.

Closet writers should feel free to send us their Articles. Have a Merry Christmas and great 2013!

Q. Don't the Supervisory functions of NDIC duplicate those of the CBN?

A. Not at all! There is no duplication of supervisory function whatsoever. Rather, what we have is a collaboration between the two institutions. Thus, there is a framework where NDIC and CBN collaborate effectively through a joint committee on supervision at which both organizations are represented at a senior level. The two institutions share banks for examination purposes on an annual basis and when such examinations are concluded, the examination reports are

Exchanged. The supervisory efforts of the two institutions are atimes conducted jointly when the need arises. Indeed, the involvement of the NDIC in bank supervision has significantly reduced the examination cycle from about once in two years to once a year, thus ensuring more effective supervision. This in turn ensures that depositors are protected and the economy is secure.

FINANCIAL CRIMES IN NIGERIA

The incidence of corruption and financial crimes in Nigeria has assumed an alarming proportion, thereby giving the country a notorious reputation as one of the most corrupt countries in the world. Economic and financial crimes represent a dangerous form of criminal behaviour that affects not only individual members of a society but also having deleterious effects on the community as a whole. Economic and financial crimes are non-violent criminal practices which are tantamount to sabotage of the national economy. The impact of these offences on the social wellbeing and economic foundation of any nation.

The peculiar nature of financial crimes have metamorphosized over the years thereby becoming more sophisticated, being aided by technological advancement. Financial crimes may take the form of advanced fee fraud, money laundering, Illegal bunkering, abuse of due process, tax evasion, cyber-fraud, abuse of position & privileges for personal gain, inflation of contract sums, bribery & kickbacks, misappropriation or diversion of public funds, under & over invoicing, among others.

Financial crimes may also involve additional criminal acts, such as computer crime, burglary and even violent crimes such as robbery or murder. Financial crimes may be carried out by individuals, corporations, or organized crime groups. Victims may include individuals, corporations, governments, and entire economies.

Financial institutions can be involved in financial crime in three ways: as victim, as perpetrator, or instrumentally. Under the first category, financial institutions can be subject to the different types of fraud including, e.g., misrepresentation of financial information, embezzlement, check and credit card fraud, securities fraud, insurance fraud, and pension fraud. Under the second category, financial institutions can commit different types of fraud on others, including, e.g., the sale of fraudulent financial products, self dealing, and misappropriation of client funds. In the third category are instances where financial institutions are used to keep or transfer funds, either wittingly or unwittingly, that are themselves the profits or proceeds of a crime, regardless of whether the crime is itself financial in nature. One example of this third category is money laundering

EVOLUTION OF THE FINANCIAL MALPRACTICES INVESTIGATION UNIT [FMIU]

By virtue of Recommendation 26 of the Financial Action Task Force's then 49 recommendations, Nigeria was required to create a Financial Intelligence Unit to effectively combat the increasing tides of financial crimes. Consequently, the Financial Malpractices Investigation Unit [FMIU] evolved as one of the major Financial Intelligence Units (FIU) in Nigeria. Financial Intelligence Units (FIU) constitute a key element in policies to counter financial crime and money laundering. FIUs are national governmental authorities that receive, analyze, and disseminate financial information and intelligence for the purpose of uncovering and prosecuting crime.

Generally FIUs are statutorily empowered to receive a wide variety of financial information from diverse sources. These may include reports by financial institutions of large cash transactions, of off-shore wire transactions, or of unusual or suspicious transactions identified as such by the institution. FIUs also typically have access to information from other domestic governmental institutions, including those administering customs, tax, pension and criminal laws, as well as from foreign FIUs. A key task of FIUs is to analyze this information (along with information publicly available) to uncover evidence of possible financial crime for use by domestic (and often foreign) law enforcement and fi

SOCIAL DIARY



In-house counsel at a recent Moot and Mock

The Legal Department in conjunction with Abba Global Legal Services has successfully completed 1st and 2nd batches of retreat on drafting skills, evidential regime and court room procedure/processes, which took place in Abuja and Lagos on the 27th November and 12th December, respectively. Kudos to legal department. In the same vein, The Corporation in collaboration with the EFCC on the 11th of December held a one-day sensitization program on security and safety for the staff of the Corporation. Congratulations NDIC.

Interview for successful candidates of the recently concluded promotion examinations held on the 28th November, 2012 for non executive cadres while interview for those qualified for executive cadres held in December, 2012. Luminary wishes all the candidates, success.

financial institution regulatory agencies.

The strategic role that the FMIU plays in the development of the financial system in Nigeria is one of the reasons the Nigeria Deposit Insurance Corporation (NDIC), as a financial safety-net player, considers the FMIU as a veritable partner in ensuring that the financial system is robust and depositor's interest are vigilantly safeguarded. To complement the efforts of the FMIU and other law enforcement agencies, the NDIC plans to revive the Financial Crimes and Malpractices Task Force.

Causes of Financial Crimes in Nigeria The high incidence of financial crimes may be attributed to many factors, some of which include:

- Widespread unemployment among Nigerian youths;
- Insatiable greed & insincerity;
- Lack of political accountability & corruption;
- Desperation caused by acute poverty;
- Failure of the Nigerian Government to diversify the economy;
- Lack of integrity on the part of public office holders and security agencies;
- Undue exploitation of local human capital by Multinationals, Government and businesses;
- Poor regulatory and supervisory framework;
- Globalization and financial market integration.

Effects of Financial Crimes in Nigeria Financial crimes are usually accompanied with devastating effects on the economy, on the citizens and the nations as a whole. Some of such effects include:

- Loss of revenue;
- It discourages foreign investment;
- It leads to decreased Foreign Direct Investment;
- Nigerian Banks lose viable business;
- Stifles economic growth which results in development failure
- It distorts key macroeconomic indices in the country;
- It robs the ordinary citizens of Nigeria of basic social amenities such as medical care, water, schools, roads and other social infrastructure;
- It diminishes national prestige and respect;
- Nigerians are treated with suspicion in most business dealings;
- Undue stereotypical and generalized distrust of Nigerians by the international community;
- Honest majority of Nigerians suffer the stigma of corruption due to stereotyping;
- Social unrests which leads to insecurity, loss of lives and properties

In a bid to curb the tide of corruption and financial crimes in Nigeria, a number of laws were enacted with the aim of identifying various aspects of financial crimes, providing ideal standards and prescribing liability for breach. The laws relating to financial crimes are meant to aid the law enforcement agencies in their duties of combating financial crimes. Some of these laws are listed hereunder:

- The Corrupt Practice and Other Related Offences Act 2000***
- The Economic and Financial Crimes Commission (Establishment) Act 2004***
- The Code of Conduct Bureau and Tribunal Act 2004***
- The Fiscal Responsibility Act 2007***
- The Financial Reporting Council of Nigeria Act, 2011***
- The Public Procurement Act, 2007***
- The Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007***
- The Freedom of Information Act, 2011***
- The Failed Banks (Debt Recovery) and Financial Malpractices in Banks Act of 2004***
- African Union Convention on Preventing and Combating Corruption***
- United Nations Convention against Corruption***
- The Challenges of Curbing Financial Crimes in Nigeria**

Successive Nigerian Governments, concerned citizens, Non-Governmental organizations and other stakeholders had made various efforts at combating financial crimes, with some significant results. However, certain challenges served as impediments to the fruition of those efforts.

Some of the challenges usually encountered in the fight against financial crimes in Nigeria include:

- The issue of corruption and financial crimes had over the years become a systematically entrenched and institutionalized phenomenon in Nigeria;
- Law enforcement agencies in Nigeria are not adequately trained and funded to effectively tackle corruption and financial crimes in Nigeria;
- Constitutional constraints: some provisions of the Constitution tend to insulate some corrupt public officers against prosecution by the law enforcement agencies;
- The poor attitude of defense lawyers who employ all manner of delay tactics to stall the legal proceedings instituted against persons accused of financial crimes;
- Lack of cooperation from foreign countries where the proceeds of some of the financial crimes are lodged;
- Congestion and slow pace of court proceedings; The existence of outdated laws in Nigeria;
- The absence of a special court for the trial of cases of corruption and financial crimes.

There is a need for a non-conviction based assets forfeiture law. Indeed the barometer for measuring the seriousness of any country is the enactment of this piece of vital legislation. Unfortunately, Nigeria does not have this legislation and several attempts to introduce it proved futile. The case for the law becomes stronger in view of the unnecessary delays in trials. Once it is appreciated that corruption and economic crimes thrive because the criminal is interested in the acquisition of wealth, then part of the anti-corruption strategy must include legal structure for depriving the criminal within the process of trial of the illicit wealth. Most politically exposed person have political immunity and have the means to evade or delay trials. However where their assets are sequestered within the bounds of the law, it is in their interest therefore to either not loot public funds or to avoid delaying trials.

Furthermore, the establishment of a Financial Crimes Court in Nigeria would contribute immensely in the fight against corruption and financial crimes. It would ensure the timely disposal of cases instituted against persons accused of financial crimes without the long delays that is usually associated with regular courts. The task of combating corruption and financial crimes must not be left wholly for the law enforcement agencies. The society has a role to play in exposing the proponents of such atrocities. It must be understood that the end-victim of corruption and financial crimes is the society as a whole. The Nigerian society must have a disposition of **zero tolerance** for corrupt persons or persons known to be engaged in any form of corruption or financial crime. Society must not 'glorify' or 'idolize' corrupt persons by honouring them with chieftaincy titles, national honours, awards by corporate entities and social/political organizations, religious honours in Churches and Mosques, or be voted/appointed into political positions. There is a need for a legal framework that protects persons who expose corruption or financial crimes, or persons who aid the law enforcement agencies in combating financial crimes.