ANALYSIS OF LEGAL FRAMEWORK FOR PREVENTION AND PUNISHMENT OF BANKING MALPRACTICE IN NIGERIA

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Abstract

This article examines Banking Malpractice as a major problem to the stability of financial institutions, especially to the banking sub-sector after the implementation of the liberalization of the financial sector, which was part of the Structural Adjustment Program (SAP), which has devastating effects on the lives of depositors and the economy in general. Despite the availability of laws, regulations, judicial decisions, and the ongoing reforms by the Central Bank of Nigeria and legal reforms, Nigerian banks are still considered among the unstable in international space rating, not proactive enough to address some of the fundamental problems affecting the banking industry. This could be attributed to a lack of strong legal frameworks and a want of political and judicial will to enforce the laws. In carrying out the study, the doctrinal method was adopted, whereby the focus was on various legal frameworks for the prevention and punishment of banking malpractice in Nigeria. The article recommended, among other things, that there is a need to establish regulatory goals, craft regulatory mechanisms that balance efficiency and service delivery goals, ensure good corporate

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governance and determine the regulator's role in promoting competition and granting financial independence to the various regulating institutions/agencies to effectively perform their core mandate in the banking subsector in Nigeria.

Keywords: Banking practice, Banking malpractice, corporate governance, punishment

1.0 INTRODUCTION

The primary legislation for the regulation of banks in Nigeria is the Bank and Other Financial Institutions Act (BOFIA), which, with the Central Bank of Nigeria (Establishment) Act 2007, gives the Central Bank of Nigeria (CBN) powers to supervise and regulate banks and other financial institutions in Nigeria. Also, other legislative initiatives are put in place to stem the tide of banking malpractices in the banking sub-sector. The fight has taken both local and international dimensions. Both the Penal and Criminal Codes also regulate the conduct of banks.[1] This is as a result of the yawning of Nigerians and the international community on the government over financial malpractices in the country; the government created the Economic and Financial Crimes Commission via the Economic and Financial Crimes Commission Act 2002, which has now been repealed and replaced with the Economic and Financial Crimes Commission (Establishment) Act 2004.[2]

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[1] Cap. 38 LFN 2004.
[2] Cap. E1 LFN 2004. Others legislative initiatives include (inter-agency collaborative role): (a) The Banks and Other Financial Institutions Act 2004.[2] (b) The Nigeria Deposit Insurance Corporation Act 2006 (c) the Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Act 2004[2](d) The Advance Fee Fraud Act 2004 (e) The Money Laundering Act 2004. [2](f) The Central Bank of Nigeria Act (Now 2007)[2]. (g)The Dishonoured Cheques (Offences Act).[2] (h) Bank Employees Act.[2] (i)Foreign Exchange (Monitoring & Miscellaneous Provision) Act (FEA).[2] (j) The Independent Corrupt Practices Commission Act 2000.

It must, however, be stated that their rules are similarly stated in the laws of the Federation of Nigeria that help in controlling and preventing financial malpractices in the banking sub-sector. These rules include: Asset declaration; list of movement of employees and employers; asset verification; prohibition of unjust enrichment and fronting.[3] Other rules include; Restrictions on dividends; disclose interest by directors; restrictions of interest by bank officials; minimum holding of cash reserves among other rules.[4] The above legislative initiatives also created the relevant institutions that are charged with the responsibilities of administering these laws like the CBN, ICPC, EFCC, and NDIC, to mention a few.

For Nigeria to attain stable and sound banking system, there are rules that govern the rights and responsibilities of banking subsector. These rules are called a legal framework or legal architecture. The legal framework that governs the banking industry rests inside broader rules governing the sector and the economic activities. A well-designed legal architecture should provide rules for how malpractice can be tackled and structure, how deposit money banks or companies acquire and manage licenses; the fiscal terms governing payment between companies and states; relationship between employees and bank; relationship between customer and employees and customers and employer; public information and accountability. Legal frameworks comprise a set of documents that include the constitution, legislation,

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[3] s 1-11 Cap 27 Vol. II LFN 1990. (Now 2004)

[4] Ss.10-18, 20, 31 – 32 Cap 28 Vol. II LFN 1990 (now 2004) and Ss.14 – 19, 24 – 29 and 43 BOFIA Act 1999. specified liquid assets; special deposits and stabilization securities; specified liquid assets, special deposits and stabilization securities; restriction of licensed banks from grant of advance, loan or credit facilities to anybody for more than 33 ½ percent profit paid up capital without prior approved of the Central Bank of Nigeria; keeping of books of account, returns delivery of Central bank of Nigeria, publication of profit and loss account and balance sheet; appointment and powers of auditors, publication of receipt of commission by staff and exclusion of certain individuals from management or employment of banks

regulations, and contracts. How these documents relate to one another, which has more force than other, is often referred to as a legal hierarchy.[5]

2.0 CLARIFICATION OF KEY TERMS

(a) Legal framework: Several definitions of legal framework and malpractice have been given by many scholars. However, for this study, definitions will suffice. From the statutory dimension, the *Banking Ordinance 1952* defined the legal framework as statutory enactments such as the Banking Acts of 1958, 1969, and the Banks and Other Financial Institutions Act 1991, the Central Bank Decree no. 24, Central Bank of Nigeria Act, 2007, which issue guidelines or financial policy to any person or institution providing financial services.

By and large, legal frameworks are legislation, rules or regulations lawfully created by law applicable to be obeyed. Also, according to *Lord Denning*[6] "one cannot place something on nothing and expect it to stand". This position validates the fact that the legal framework is the basis and fulcrum within which laws are regulated or based upon.

Black's Law Dictionary defined the word *legal* as: Conforming to the law; according to law; required or permitted by law; not forbidden or discountenanced by law; good and effectual in law; or about the law; lawful,[7] *Mohammed*[8] defined *Legal*, within the province of law as: established, required or permitted by law, lawful, or of or relating to

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[5] Smith, Erin & Peter, R. Enforcing the Rules (NRGI 2011), available at: http://www.resoucegovernance.org/publications/enforcing-rules Accessed August 14, 2019, Pp.1-2.

[6] Macfoy v UAC (1962) AC 152.

[7] Garner, A.B. ,8th Edn Black Law Dictionary, West Publishing Company, United State of America,1990 p.894. See Freeman v Fowler Packing Company, 135. Kan.378,11 p.2d 2d76,277.

[8] Mohammed op cit p.553.

law as opposed to equity.[9] *Framework* involves plan, shape, or construct, especially to draft or otherwise draw up.[10]
This study considers the definition of *Banking Ordinance of 1952* established above more elaborately for this research, thus relevant in this discourse. Finally, this study opines that a legal framework can be defined as a body of rules and regulations, legislation, authority, as a structure, usually rigid, basis serving to hold the part of something or a body of regulations together or support something constructed, the basic structure or system especially as draft or otherwise draw up.

(b) Prevention: It is observed that neither the *Bank and Other Financial Institutions Act, Nigeria Deposit Insurance Corporation Act*, nor the Constitution of the Federal Republic of Nigeria defines the term “prevention.” Also, we have not come across a judicial definition of the concept of “prevention.” However, there a dictionary definition of the concept of “prevention”

Black’s Law Dictionary defines the term prevention as: to hinder or preclude, to stop or intercept the approach, access, or performance of a thing.[11] *Black’s Law Dictionary* further defined prevention as: the practice of law that seeks to minimize a client’s risk of litigation or secure more certainty concerning the client’s legal rights and duties.[12] Prevention doctrine is the principle that each contracting party has an implied duty not to do anything that hinders the other party from performing its obligation.[13] Here, the definition did not specifically define prevention.

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[9] Patrick D., The Judge, (1979) Pp.32-33.
[10] Ibid p.728.
[11] What is PREVENT? Definition of PREVENT (Black’s Law Dictionary), available at PREVENT, Accessed August 14th, 2019.
[12] Garner, B. A., Black Law Dictionary 9th Edn printed in United State, 1999, P.977.
[13] Ibid p.1308.

The provision in *Bank and Other Financial Institution Act* adds more voice to the definition of *prevention* from the standpoint of restriction on certain banking activities. It explains the term from the perspective that a bank, specialised bank or other financial institution shall not, without the prior approval in writing of the Bank, grant to any person any advance loan or credit facilities or give any financial guarantee or incur any other liability on behalf of any person so that the total value of the advance, loan, credit facility, financial guarantee or liability in respect of the person is at any time more than 20% of the shareholders' funds unimpaired by losses in the case of a commercial bank, and 50% of the shareholders' funds unimpaired by losses in the case of merchant bank, and in the case of specialised banks and other financial institutions, such percentage as the Bank may determine.[14]

From the above definitions, we consider the definition of *Black's Law Dictionary* more elaborate for this research work because of the emphasis on the act of hindering, precluding, to stop or intercept the access, or performance of a thing considered inimical to the existing rules and regulations of a given state of affairs of the organisation or society as a whole.

(c) Malpractice: Despite being firmly embedded in the international lexicon, there is a question as to whether "malpractice" has become a term of art or social science, therefore different ideas as to what is meant by "malpractice" emerge from various views. The concept has generated a lot of controversy in Nigeria of late. From statutory dimension, Economic and Financial Crimes (Establishment) Act 2004 defines malpractice as the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or a group or organized manner there by violating existing legislation

[14] Section 19 (1) BOFIA 2020. As amended.

governing the economic/financial activities of government and its administration and includes any form of corruption or corrupt practices, fraud, narcotic, drug trafficking, money laundering, embezzlement of public funds, bribery and looting, illegal arms deal, any form of corrupt practices, dumping of toxic waste and prohibited goods etc.[15]

It is pertinent to quote *Oche in* his book,[16] as recorded in the House of Representatives on the 8th day of April, 1952, reading in the House. He said:

> *"... the fact of the matter is, sir, there are many malpractices and practices which are below what is normally considered normal banking practice among many bank/ institutions in this country styling themselves banks and it was with this knowledge that Government some years ago decided to consider the introduction of legislation to control banking".*

Similarly, in *Katsina-Alu, JSC*, placed emphasis on malpractice in *Samson Babatude Olarewaju v Afribank Nigeria plc,[17] the court defined malpractice that*:

> *... Irregularity' and 'malpractice' do not constitute any offence known to our criminal law. These have been defined at pages 662 and 767 of the Chambers' 20th Century Dictionary (1983 edition) respectively as follows: 'irregularity', a rough place or bump on an even surface; an instance of action, behaviour, etc not conforming to rules or regulations. And 'malpractices', an evil or improper practice; professional misconduct; treatment falling short of reasonable skill or care; illegal attempt of a person in*

[15] Section 46 of the Economic and Financial Crime Commission (Establishment) Act. Cap. E1 Laws of the Federation of Nigeria (LFN) 2004.
[16] Oche, P.N., Banking Law and Practice in Nigeria, Heirs Great Commission Jos, (2002) p.7
[17] (2000-2001) 10 N.BL. R (Part II) 401, particularly at 420.

> *position of trust to benefit himself at others loss.*[18] *He stated further that for an irregularity or a malpractice to amount to an offence, it must be known to law.*

On this note, it can be safely be said that the various definitions offered above clearly leave no one in doubt that our working definition of malpractice is not only unethical, improper practice and anti-social but its taints, spoils, vitiates, and debases and above all it morally degenerates a legally thriving system.

3.0 LEGISLATIVE AND STATUTORY REGIMES FOR PREVENTION AND PUNISHMENT OF BANKING MALPRACTICE IN NIGERIA

(a) Constitution of the Federal Republic of Nigeria, 1999

A constitution is a primary document used for managing the country's affairs democratically. It also aimed at protecting human rights and the various institutions of government that exist therein. A constitution is a set of principles that can be written or unwritten to help in the governance of the country.

The Supreme Court held that certain interrelated propositions flow from the acknowledged supremacy of the constitution and by which any law or provision derive its validity of any impugned provisions will be tested.[19]

The constitution gives validity to all the laws of the land as the makers of such laws drive their powers from the constitution.[20] By these provisions, the constitution seeks to assume the status of *Kelson's* concept of grand norm, which is the basic norm that is the common

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[18] Samson Babatunde Olarewaju v Afribank plc (2000-2001) 10 N.B.L (Part II) 401, particularly at p.410, paragraphs e-g.
[19] INEC V Musa (2003) 3 NWLR (Pt.806) 72 at 157 paras D-G
[20] Ibid S. 4 (1-9).

source for the validity.[21] Thus all banking laws in Nigeria including the laws governing non-interest banking have their roots traceable to the CFRN. Where any of these laws were made before the constitution came into force the validity of such law is co-opted into the CFRN and they in turn derive their powers from it.[22] The purpose of section 315 (4) (b) CFRN is to bring all laws predating its coming into its ambit and deem them as having been properly made under the CFRN thus, having the force of law.[23]

It should be noted that constitution is a document designed by the people, setting out the relationship between the people and the three organs of government, on the one hand, and between the organs themselves, on the other hand. It is important to note further from the outset that the constitution, in a normal constitutional setting,[24] reflects the wishes and aspirations of the donors of the constitutional powers as contained in the document. The constitution, pursuant to the aspirations and wishes of the donors of its powers, create the structures of government for the actualization of those goals.[25] The structures with their substructures are political and therefore represent the

[21] Morrison., W. Jurisprudence from Greeks to Post Modernism, London: Cavendish, 1997 p.337-338.

[22] Such laws are referred to as existing laws; see also Section 315 (4) (b) CFRN 1999.

[23] Abikan., A.I Constitutionality of Islamic Banking in Nigeria, Pub, Contemporary Issues Islamic Jurisprudence. A book published in honour of the former CJN Idris Legbo Kutigi by Rawel Fortune Resources, Benin. 2009, Pp.94-121.

[24] Till.,. C. "War Making and State Making as Organised Crime", in Bringing the State Back ed. P Evans. D Rueschemeyer and T Skocpol (Cambridge: University Press, 1985) p.98.

[25] The Constitution of Nigeria, 1999. The Constitution was imposed on people by the Military. The people were never allowed any impute in the constitution-making, but the preamble to the Constitution makes a blatant and treasonable misrepresentation of the source of the Constitution as the people.

constitutional arrangement put in place to ensure peace, order and good governance/government.[26]

(b) The Bank and Other Financial Institutions Act as Amended (BOFIA) 2004

The government's control over the activities of bank and other financial institutions was strengthened by the promulgation of the Banking (Amendment) Act of 1962. This enactment in various areas attempted to remove the ambiguities and loopholes in the original formulation of the previous banking statute such as the banking Ordinance of 1958 (Cap.19). The 1962 Act also added the powers of the CBN on monetary control. The enactment of the Companies Decree No. 51 of 1968 made it compulsory for all companies including banks operating to be incorporated in Nigeria.

It should be remembered that, all the above enactments which relate to banking operations were further codified in the Banking Decree No 1 of 1969. The promulgation of the Nigerian Enterprises Promotion Decree of 1972 to 1977, which was repealed in 1989, concluded a host of banking and other institutions' legislation that had far reaching effects on the operations of the banking industry over 10 years. After more than a decade and half of banking legislation, a more comprehensive legislative framework for banking operation, in this case for the prevention and punishment of banking malpractice was conceived and executed in the name of Banks and Other Financial Institutions Decree No. 25 of 1991 (BOFID) which was to augment regulation and supervise effective monetary policy. The promulgation of BOFID in 1991 was for banking and non-banking institutions in the country.[27]

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[26] The essence of arrangement is to accomplish the objectives of governance as are contained in the preamble, and as could be observed in Chapter II of the Constitution.

[27] Muhammad, K.G., Op cit?

The BOFIA is a codification of all the pre 1991 banking laws and was enacted to fill in the obvious lacuna created by the CBN Act. This gap ranges from advertisement for deposits, interest charging or lending to grounds for the revocation of license. The underlying philosophy is to protect customer or consumer from incidence of banking malpractice. It empowers the governor of the CBN to remove any staff or manager of a failing banking or other financial institution. BOFIA is the operational law in this regard. The Act contains sixty-seven (67) sections. A careful perusal of some of the Sections reveals that they accorded need to be further amended in order to take care of / engendering, a more robust, confidence in the banking operation and in order to stem the tide of banking malpractice

Under the Banks and Other Financial Institution Decree no. 25, 1991 (BOFID), the Central Bank of Nigeria as apex regulatory activity is empowered to licence and regulate the activities of banks and other financial institutions operating in Nigeria. The Decree consequently made elaborate provisions for other offences and punishments against acts of directors and officer of banks which are considered inimical to the proper operations of a bank. Some of the critical provisions creating sanctions against malpractice in banks are hereunder discussed:

***(c)* Insider abuse-section 18:** The section not only prohibits the incidence of insider abuse, but also imposed sanctions against fraud and malpractice associated with the grant of loans and credit facilities by banks. By this, provision, managers or officers of the banks are required to be above board and not to have any interest or derive any benefit in any credit facility granted, but where any interest exists, such officer shall disclose the nature of his interest. Furthermore, bank officers are not allowed under any guise to grant facilities contrary to their internal rules and regulations and where such regulations require them to obtain adequate security, such security shall be first had and obtained. Any contravention of this provision attracts imprisonment for 3 years or N100, 000, and gain or benefit that may accrue to the officer from the transgression, shall be forfeited to the Federal Government.

(d)*Restriction on certain banking activities- section 20*: section restricts certain activities of the banks except prior approval of the CBN is obtained. Such activities include the total amount of any loan or financial guarantee that may be granted to any person. I n addition, under section 20, the bank is prohibited from permitting to be outstanding unsecured credit in excess of N50,000 to its directors and that related companies. The section did not provide criminal punishment for its contravention, it however, made bank directors liable jointly and severally to indemnify the bank against any loss as result of any breach of provisions. Notwithstanding the absence of criminal sanctions under section 20, any director or manager who is found to have been instrumental to the breach under section 20 is criminally liable to be punished under section 46 of the Decree for 5 years imprisonment or N5, 000 fine or to both fine and imprisonment.

(e)*Keeping proper books of account- section 24*: In order to facilitate the early detection of fund or any financial malpractice, section 24 made it mandatory for all banks to keep proper books of account in a designated place in respect of all transactions relating to the operation of the bank. It is the responsibility of the bank directors and management under section 24(5) to ensure that the bank complies strictly with the provision of the section and to ensure that all statements, whether oral or written, submitted in relation to the bank an accurate and devoid of any falsification. Any director, manager or officer of the banks, who negligently or otherwise fails to ensure compliance with the provision of the section is liable to imprisonment for 5 years or a N10, 000 fine or both, and where such book officer wilfully causes the bank to make the default, such officers is liable to 10year imprisonment or N50, 000 fine or both fine and imprisonment.

It is noteworthy that the provisions in the BOFIA have laid a legal foundation for banking business in Nigeria. It is in pursuance of this that the bank issued certain guidelines pursuant to some relevant provisions in the BOFIA (as amended), the Act restricts and makes it a punishable offence for illegal operation of banking business in Nigeria without appropriate authorization thus: “No person shall carry on any banking business in Nigeria except it is a company duly incorporated in Nigeria and hold a valid license issued under this Act. Any person who transacts banking business without a valid license under this Act is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 10 years or to a fine of N2, 000,000.00 or both such imprisonment and fine”.[28]

The BOFIA 2020 has six majors has six major new provisions. These new provisions include sections on the creation of a new banking sector resolution fund[29], the creation of a new tribunal for the enforcement and recovery of eligible loans and the closure of banks during strikes, epidemic or pandemics[30]. The other new provisions include sections on restrictions on operations of banking agents, cybersecurity and netting arrangements[31].

The main legal provision aimed at preventing the occurrence of malpractice in the banking Industry in Nigeria is the Bank and Other Financial Institutions Act 2020,[32] in spite its inherent shortcomings. By the terms of the provisions of the Acts, the banking sector is one of the most regulated sector of the nation’s economy. A case at hand is, the case of *Federal Republic of Nigeria v Anyaegbunam[33],* where the Accused was a director of Group Merchant Bank Limited. He was also the Chairman and majority Shareholder of Cobik Supplies and Trading

[28] s 2 (1) BOFIA 2004.
[29] s 74 (1) Banks and Other Financial Institutions Act 2020.
[30] s 102-132 Banks and Other Financial Institution Act 2020.
[31] s 54 (1) Banks and Other Financial Institutions Act 2020.
[32] BOFIA
[33] (1997) 1 FBTR 1.

Company Limited. Group Merchant Bank Limited granted loan in the total sum of N9, 313,447.10 (nine million three hundred and thirteen thousand four hundred and forty-seven naira ten kobo) to Cobik Supplies and Trading Company Limited. At all material times, the accused did not disclose his interest in Cobik Supplied and Trading Company Limited to the Board of Directors of Group Merchant Bank Limited. The Tribunal found the Accused guilty of failure to disclose his interest in the loan, contrary to section 18 of the Bank and Other Financial Institutions Decree.

In *Federal Republic of Nigeria v Chief Ajibowu A. Owoade & Ors*[34], the 1st Accused Person was the Executive Vice Chairman of Prime Merchant Bank Limited. The bank carried out "non-third currency trading between May to August, 1990 through the bank's independent source account maintained with American Express Bank-London. During that period a total gain of *S*258, 342:29k (two hundred and fifty-eight thousand three hundred and forty-two United States Dollars and twenty-nine cents) was made and properly reported in the Bank's Profit & Loss Account. The Tribunal found that the 1st Accused Person did not report the activities of the non-third currency transactions in any record or books of the bank. Consequently, the 1st Accused was found guilty and convicted of the offence of failure to keep proper information and records of the forex transaction. In addition to prohibiting the carrying out of banking business without a valid license.

Under the new Act, some provisions were modified to cover more scenarios. Some sections that previously had one or two subsections were revised to cover more events and regulations. The key area for amendments covers changes in penalties, minimum capital ratio, opening and closing of branches, display of information, restriction of certain banking activities, failing banks and rescue tools, function of

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[34] (2000)1 NBLR 1.

CBN Examiners and operations of foreign banks in Nigeria and offshore banking. These include the following:

(g)Penalties

All penalties mentioned in BOFIA 1991 were revised upwards to accommodate the impact of inflation and devaluation on the domestic currency. BOFIA 2020 charges significant monetary penalties on official within the financial services sector, which, in the opinion of research work, would encourage accountability, ownership of responsibility and potentially pare back high-risk behaviour. Financial institutions will also ensure that provisions under this Act are obeyed to minimise charges arising from breaches.

(h) Minimum Capital Ratio

In addition to maintaining minimum capital ratios, the CBN may now prescribe a higher or lower capital adequacy ratio for any category of banks. The CBN may require any bank that has a holding company, a subsidiary or both to calculate and maintain minimum capital ratios on a consolidated basis. This is an amendment from the old Act which empowers the CBN to prescribe higher or lower capital ratios at its discretion. This study note that the proposed capital adequacy ratio for SIBs was never implemented.

(i) Opening and closing branches

This provision includes cash centres and representative offices to the coverage of offices for which banks are to obtain consent from CBN before opening or closing. In addition, the six-month notice period was introduced as a requirement for any bank intending to close any of its branches, outlets or subsidiaries. This study believes that this provision will encourage banks to be more strategic in establishing and shutting down branches and outlets, especially about the potential impact on customers and bank staff.

(j) Display of information

In the BOFIA 1991, this provision was titled “Display of interest rates”. However, this has been expanded to “Display of information"[35]. In the new Act, banks are required to display information at their offices and on their websites (*not included in the old Act)*. This study opines that this provision will enhance transparency and competition in the banking industry.

(k) Restriction on certain banking activities

The BOFIA 2020 prohibits specialized banks or other financial institutions (without the prior approval in writing of the CBN) from granting any unsecured advance, loan or credit facility except it is in line with the regulation on collateralisation as may be issued by the Central Bank of Nigeria[36]. This study acknowledged that the banking industry grants short term loans (or overdrafts) to low risk and large conglomerates on a cash flow basis. These credits are granted in repeated cycles, helping the industry's profits, especially as interest rates on these loans tend to be slightly higher than on longer-tenured credits.

(n) Failing banks and rescue tools

Where a bank is adjudged to have failed, the CBN governor may suspend any payment or delivery obligations pursuant to any contract to which the bank is party.[37] This is not contained in the old Act. Furthermore, the governor may transfer the whole bank or only part of the banking business to third party private purchasers or employ any other intervention tool as the CBN may deem fit. The CBN now has powers to acquire the shares of any failing bank up to a level that guarantees its control of the bank. If everything else fails, and the state of affairs of the bank concerned still does not improve, CBN may invoke its power to revoke the license of the bank.

In an old Act, the Nigerian Deposit Corporation (NDIC) had the responsibility to take over the control and management of a failing bank and in a worst-case scenario, recommend other resolution

[35] Section 22 (1) (a) BOFIA 2020.
[36] Section 19 (1) (a) BOFIA 2020.
[37] Section 34 (1) BOFIA 2020.

measures including the revocation of the bank's license. However, with the BOFIA 2020, the NDIC's function has been somewhat removed. With a perceived overlapping mandate between the CBN and NDIC, there is need for clarity especially in the area of resolution of failing banks where NDIC is known to be the primary actor in the resolution process.

(m) CBN Examiners

In the new Act, the Governor may appoint examiners who shall have the right to attend (as observers) management and board meetings of banks, other financial institutions and specialized banks to which they are assigned. This study observed that this law somewhat contradicts the efforts made by the regulatory body over the years in terms of corporate governance, which resulted in stronger independent boards and corporate governance structures. It is our view that, the presence of CBN examiners at these management and board meetings would impair expressiveness and may be counterproductive in the long run. It is our view and believes that if this provision remains, it should be applied strictly to banks in financial distress.

(o) Operations of Foreign banks in Nigeria and offshore banking

The CBN may grant to any bank registered in Nigeria or a foreign bank a license to undertake domestic (absent in the old Act) or offshore banking business within a designated free trade or special economic zone in Nigeria.[38] This provision, which is an amendment to the prior, somewhat contradicts an existing law that says licenses to carry on banking business in Nigeria may only be granted to companies duly incorporated in Nigeria. Thus, foreign banks seeking to obtain banking licenses in any part of Nigeria, including designated free trade or special economic zone should also incorporate a Nigerian subsidiary for that purpose. This study thinks that this provision may

[38] Section 8 (1) (2) BOFIA 2020.

place Nigerian banks at a disadvantaged position over the foreign counterparties in the long-term run.

In conclusion, this study believes that there are grey areas in new Act, as rightly discussed in the preceding sub-head, that there need to be clarified or amended to achieve the purpose for which the BOFIA was reviewed. Although this legislation is borne out of good intentions, certain provisions, if not clarified or amended, may be inimical to the government's focus of creating an enabling business environment.

(p) The Nigerian Deposit Insurance Cooperation Act No. 16 of 2006

In Nigeria, the need for a special regime for bank resolution was recognised long before the GFC through the Nigerian Deposit Insurance Corporation Decree of 1988, which was repealed by the Nigerian Deposit Insurance Act of the same year. The 1988, Act was subsequently repealed and replaced by the Nigerian Deposit Insurance Corporation Act of 2006 (NDIC Act) which establishes the Nigerian Deposit Insurance Corporation (NDIC) as the liquidator and receiver of failing banks. This piece of legislation is complemented by the Banks and Other Financial Institutions Act (BOFIA),[39] which is the central piece of legislation for the regulation of the business of banking in Nigeria.

The Nigeria Deposit Insurance Corporation (NDIC) Decree no. 22, 1988, provide that under section 17(2) of the Decree, enjoins all the banks to co-operate with the NDIC-appointed examiners by producing as and when due or required all books, records or information necessary for the performance of the examiners' duty. It is an offence for any bank to wilfully refuse to produce any book, record or information, or to wilfully or negligently or with intent to commit fraud, produce false information. It is instructive to know that this

[39] Bank and Other Financial Institutions Act, Cap B3 Laws of the Federation of Nigeria, 2004 (BOFIA) (op cit??)

offence is corporate, as distinct from offences against the functionaries of the bank. However, under section 19 of the Decree, any director or officer of the bank who breaches the provision of section 7(1), or any other provision of the Decree, or has not taken adequate precaution under the Decree, shall be guilty of an offence and liable to imprisonment for 2 years or N50, 000 fines to both fine and imprisonment.

The corporation was established primarily as a deposit insurer, there are ancillary functions that necessarily proceed from this primary mandate from the provision of the omnibus functions clause[40] Consequently, the Act allows the Corporation to routinely supervise institutions[41], and where such supervisory oversight reveals financial crime, the Act permits the Corporation to take prompt corrective action. Section 32 (1) provides: Without prejudice to the provisions of the this Act, where the examination by the Corporation as to the condition of any insured institution disclosed that: (a) insured institution or its directors or staff have engaged in unsafe and unsound practices in conducting the business of the institution; (b) or have violated or are violating any provisions of any law or regulation to which the insured institution is subject; (c) where such violation may lead to insolvency or dissipation of the assets of the insured institution, the Corporation shall submit the report of the examination to the management of the bank with specific directives to address the situation by taking corrective measure.

(q) The Failed Banks (Recovery of Debts) & Financial Malpractice in Banks Act 2004

The Failed Banks Act was passed into law in 1994 as Failed Banks (Recovery of Debts) and Financial Malpractice in Banks Decree No.18

[40] Section 2 (1) (e) of the NDIC Act 2023.
[41] Sections 27-32 of the NDIC Act 2023.

of 1994 during Military era.[42] It became an Act by the operation of section 315 (1) (a) of the Constitution of the Federal Republic of Nigeria.[43] The Failed Banks (Recovery of Debts) & Financial Malpractice in Banks Act 2004 repealed the Failed Banks (Debt Recovery) and Financial Malpractice Act of 1994.It provides for the recovery of debts owed to failed banks and for the trial of offences relating to financial malpractice in banks and other financial institutions in Nigeria.[44] The Failed Bank (Recovery of Debts) and Financial Malpractices in Bank Act which seeks to punish bank directors, staff and customer who may have contributed in any way to the failure of a bank.[45]

The Failed Bank Act was passed into law with a view to providing a legislation that facilitate speedy recovery of debts owed failed banks. It also provided for regulating the conduct of banks officials by making certain hitherto simple infractions to become criminal offences with the coming into force of the Act. It also focuses on providing far reaching and revolutionary procedure for speedy and effective adjudication of criminal offences under the Act. The preamble to the Act provides that it is an Act- "to provide for the recovery of the debts owed failed banks and for the trial of offences – relating to financial malpractice in banks and other financial institutions".

(r) The Central Bank of Nigeria Act 2007

One of the most important institutional changes in the history of monetary and financial system in Nigeria happened in 1958 with the

[42] See Failed Banks (Recovery of Debt) and Financial Malpractice in Bank Decree 1994, section 23(4) import of –Olieh v Federal Republic of Nigeria (2005) ALL FWLR (Pt.281) 1746 C.A., see also Failed Banks (Recovery of Debts) and Financial Malpractices in Bank Decree, 1994, section 3 (1)(d)- purport of (Pt.281), 1746 C.A.

[43] The Decree is now referred to as the Failed Banks (Recovery of Debts) & Financial Malpractice in Banks Act Cap F2 Vol. 6 LFN 2004.

[44] See the preamble to the Act, of the Failed Banks (Debt Recovery) and Financial Malpractice Act, 2004.

[45] Failed Bank (Recovery of Debts) and Financial Malpractices in Bank Act, Cap F2 Laws of the Federation of Nigeria 2004.

establishment of the Central Bank.[46] As discussed above, the banking industry was without regulation and control. As such, in 1948, a panel of inquiry was established by the British colonial government under the leadership of Mr. G.D Paton to examine banking activities in the country. This followed the serials of collapse of many indigenous banks in the 19940s, which ruined their depositors. The panel sat, deliberated and forwarded its report which became the basis of the firs banking legislation in Nigeria – the Banking Ordinance of 1952.[47] In 1958 a bill for the establishment of CBN was presented to the House of Representatives. The Act was passed into law on 1st July, 1959, after the CBN came into force. The CBN Act was further promulgated in 19991 by Decree No 24 by then Military Government.[48]

The CBN's responsibility for regulating and supervising banks and other financial institutions is not in question. The CBN's supervisory role is structured into three (3) departments, as follows: (a) The Financial and Regulatory Policy Department, (b) the Banking and Supervisory Department, and (c) the Other Financial Institutions Department.

The grant of approval and licensing of financial banks is carried out by financial policy and regulation department. This department in carry out its duties must ensure that this is done without prejudice to the financial stability of the economy. The department of the Central Bank of Nigeria (CBN). It should be noted that this department generally supervises Community Banks, Private Mortgage Financial Institutions, Finance Companies, Bureau De Change and Development Finance

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46 Igweike, K.I., Law of Banking and Negotiable Instruments, Onisha, African first Publishers Limited, 2005 pp10-23.

47 Olumuyiwa, O., "Consumer Protection: CBN Recovers N9bn Excess Charges from Banks, The Citizen-Nigeria's Leading Online Newspaper", accessed November 3, 2015.

48 Muhammad, K.G., "A Critical Analysis of the Conformity of Extent Banking and Related Laws with Electronic Banking in Nigeria" Journal of Law Policy and Globalization (2015), accessed November 5, 2015, http://www.iiste.org/journals/index.php/JLPG/article/view/20331.

Institutions. The supervision includes independent on-site assessment of banks corporate governance, internal control system, reliability of information provides. The Act monitors the activities of the mortgage institutions using these medium; Review and Analysis of the financial control of mortgage banks through the use of prudential reports, statutory returns and other relevant information. This Act is enacted by the National Assembly of the Federal Republic of Nigeria and by virtue of this enactment; the CBN is established.

The powers of the bank that guides its operation is provided in the Act but it quite unfortunate that rather than consulting of the provision that will give directive as to establishment of banks and the over-bearing powers of CBN on the establishment and operation of other banks.[49] However, it is discovered that the established operation of other banks are recognized, this provision states thus:[50] "The bank shall whenever necessary seek the cooperation of and cooperation with other banks in Nigeria to: Promote and maintain adequate and reasonable financial services for the public; further, such policies which are not inconsistent with the opinion of the bank is to be of the national interest.[51] This provision can similarly be buttressed by the effect of section 41 which declares recognition and relation with CBN with other banks. It provides thus "The bank shall act as banker to other banks in Nigeria and may also provide banking service to other banks outside Nigeria.[52] Be that as it may, it can safely said that given the combined effects of sections 41 and 42 (1) (a-b) the existence of Conventional banking is not only recognized, its operational system of banking as a bank is also legally recognized.

(s) The Companies and Allied Matters Act 2020 (as amended)

[49] See section 27 (a-f) CBN Act 2007.
[50] Section 42 (1) (a) and (b) CBN Act 2007.
[51] Ibid.
[52] Section 41 CBN Act 2007.

A point should be make here that, section 282 of the Companies and Allied Matters Decree (CAMD) in the first place, though did not create criminal liability on bank directors per-se, it however, impose strict standard of behaviour and duty of care on bank directors with a view to preventing fraudulent disposition, by requiring, them to carry on their duties honestly, in good faith and in the best interest of the company. It imposed civil liability in negligence and breach of their duty.

The provision of section 503, 504, 505 and 508 imposed criminal liabilities on directors, officers and agents of banks being wound-up. For example, under section 503, any officer or contributory of companies/banks being wound-up who falsifies any book of the bank is liable to imprisonment for two (2) years or fine of N2, 5001.00. Similarly, section 504 makes an officer of a bank which is ordered to be wound-up, liable to imprisonment for 2 years without option of fine, where such officer fraudulently induce a person to give credit to the bank, fraudulently made or caused to be made gift or transfer of a cheque, or connived to the levying of execution on the property of a company/bank, or has concerted or removed any property of the bank, with intent to defraud the creditors. For failure to keep proper books of accounts during the period of 2 years immediately preceding wind-up, section 505 imposed criminal liability punishable by five years' imprisonment or option of fine of N2, 500, on every officer of a bank who is found to have been responsible for the default.

CAMA to a large extent, regulates certain aspects of banking, since in Nigeria; a bank must first be incorporated as a company under the CAMA, before it can apply to the appropriate authorities[53] for a banking operational licence.[54] To this extent, a bank may be regarded

[53] The Central Bank of Nigeria (CBN).

[54] See Banks and Other Financial Institutions Act (BOFIA) Cap, B3, L.F.N., 2010, s. 2 (1), which provides that "No person shall carry on any banking business in Nigeria except it is a company duly incorporated in Nigeria and holds a valid banking licence

as a specialised typed of company; in the same class with an insurance company. Nevertheless, the operations of banks in Nigeria are primarily regulated by the Banks and Other Financial Institutions Act (BOFIA).[55]

It would appear that the only mode of winding up of banks and other financial institutions recognised under the BOFIA is winding up of a bank by the court which is also referred to as compulsory winding up. The Act makes no provision for voluntary winding-up or winding-up subject to the supervision of court. Additionally, though banks are primarily companies registered under the CAMA, it is obvious that they cannot be wound up except in strict compliance with the procedure prescribed under the BOFIA. Thus, in the case of NNB International Bank Plc v Triumph Bank Plc...[56] the court held that the petitioner, who was a creditor of the Respondent Bank, did not fall into the categories of people entitled under the BOFIA to present a petition to wind up the bank; and so lacked the locus standi to present the said petition.[57] The motion to advertise the petition was therefore refused and the petition itself was struck out. Indeed, the provisions of section 427(1)(2), 428(1)(2) of the CAMA[58] and the Companies Winding-up Rules with any amendment thereto[59] are expressly excluded from application in the liquidation of failed banks. It is therefore settled that both the BOFIA and NDIC Act allow for the appointment of a body corporate, the NDIC as the liquidator of failing

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issued under this Act". See also Insurance Act, Cap. 117, LFN, 2010 s. 3 (1) (a) which, in respect of an Insurance Company, provides as follows: "No person shall carry on any class of Insurance business in Nigeria except- a company duly incorporated as a limited liability company under or pursuant to the Companies and Allied Matters Act"

[55] Cap. B 3, L.F.N., 2010.

[56] Suit NO. FHC/I/CS/1148/2004 (unreported). (Nigeria)

[57] The NDIC is statutorily empowered to present the petition for winding-up of failing banks; see BOFIA, s. 39 and NDIC Act, s. 40(2) and (3).

[58] NDIC Act, s. 40(4).

[59] Ibid, s.40(5).

banks. Accordingly, the provisions of the BOFIA and the NDIC Act on the appointment of a body corporate as a liquidator are clearly in conflict with the provisions of the CAMA on the same issue. In resolving the conflict, recourse must be made to section 55(1) of the BOFIA which provides to the effect that where the provisions of the CAMA on are inconsistent with the provisions of the BOFIA, the provisions of the BOFIA shall prevail. There is an overriding need to promote transparency in the banking and financial reporting.[60] Section 357 of CAMA (1990) state that: every company shall at each annual general meeting appoint an auditor or auditors to audit the financial statements of the company, and to hold office from the conclusion of that, until the conclusion of the next, annual general meeting. Section 359 state that the auditors of a company shall make a report to its members on the accounts examined.

(t) The Fiscal Responsibility Act, 2007

In Nigeria, lofty ambitions of entrenching fiscal discipline for prevention banking malpractice and the improving the quality of public expenditure for Nigeria citizens/ customer who have long been denied any form of accountability from financial institution and political leaders are alike, have been confronted by lack of political will to adhere to the provision of FRA 2007.In the preamble of the federal FRA, it is stated that the law was enacted to: Provide for prudent management of the nation's resources, ensure long-term macro-economic stability of the national economy, secure greater accountability and transparency in fiscal operations within the medium term fiscal policy framework, and the establishment of the Fiscal Responsibility Commission to ensure the promotion and enforcement of the nation's economic objectives.[61]

[60]Okike, E. N. M., & Adegbite, E., The Code of Corporate Governance in Sub-Saharan Africa: Efficiency gains or social legitimation, available at https://www.researchgate.net/ ..., accessed 15th May, 2021.

[61] Federal Republic of Nigeria (2007) Fiscal Responsibility Act 2007. Act No.31.

The FRA contain a mix of procedural and quantitative rules- procedural rules relate to adherence to the MTFF, government of budget progress, savings and asset management, provisions on audits and reporting requirement for government and transparency and accountability standards. The qualitative rules, on other hand, outline price-based rules, the size of the fiscal deficit, and the limits for accumulating public debt, as well as reservation of public borrowing exclusively for capital (development) expenditure.

It is an offence under this Act, for any director or any employee of a bank to own assets in excess of his legitimate, known and provable income and assets. The punishment for contravening this provision is 10 years imprisonment and for feature of excess assets or its equivalent in money to the Federal Government. Section 7(4) further provides that 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.

(u) The Financial Reporting Council of Nigeria Act, 2011

The Financial Reporting Council (FRC) of Nigeria is a federal government agency established by the Financial Reporting Council of Nigeria Act, No. 6, 2011. It is a federal government Parastatal under the supervision of the Federal Ministry of Industry. Trade and Investment. The FRC is responsible for, among other things developing and publishing accounting and financial reporting standards to be observed in the preparation of financial statements of public entities in Nigeria; and for related matters.[62]

The Council's main objects, as defined in the FRC Act, are to:

(1) investors and other stakeholders' interests

[62] See, Financial Reporting Council of Nigeria, available at www.financialreportingcouncil.gov.ng > ..., accessed 20th May, 2021.

i. Give guidance on the issues relating to financial reporting and corporate governance to professional, institutional regulatory bodies in Nigeria.
ii. Ensure good corporate governance in the public and private sectors of the Nigeria economy.
iii. Ensure accuracy and reliability of financial reports and corporate disclosures, pursuant to the various laws and regulation currently in existence in Nigeria…..'

The Council has powers inter alia to enforce and approve the enforcement of compliance with accounting, auditing, corporate governance and financial reporting standards in Nigeria.[63]The Act provides that a professional accountant is required to perform his audit duties in full independence, in accordance with prescribed ethical codes and without conflict of interest.[64] The Council is vested with powers of investigation into any complaint or dishonest practice, negligence, professional misconduct, malpractice made against any registered professional[65] and prescribes sanctions for non-compliance with accounting and financial reporting standards provided under the Act.[66]

(w) The Criminal Code Act, 1990 Laws of the Federation

The Criminal Code or the Penal Code as the case maybe, predates all the other laws on fraud/ banking malpractice. However, the criminal code did not define malpractice but makes elaborate provision against frauds committed against companies. Such provisions are also applicable to banks since banks in the first place are companies before they are licensed to carry on banking business. Section 435 makes it an offence punishable by seven years imprisonment for any company

[63] Section 7 (2) (a) of Financial Reporting Council of Nigeria Act, 2011.
[64] Ibid. s 46 & 47
[65] Ibid. s 62 (1) (a) .
[66] Ibid. s 64 & 65.

(bank) director or officer, fraudulently, appropriates, any company's (banks) property or ill intent, to defraud, omits to make full and true entry into the books and accounts of the books of the bank, or destroys, alter, mutilates or falsifies any book of account or makes any false entry therein. Section 436 also imposed severe punishment of seven years imprisonment on any clerk or servant of the bank who commits offences analogous to section 435.
Finally, section 472 of the Criminal Code Act equally prescribes seven (7) years imprisonment as punishment for any one with intent to defraud, to obliterate or alter in any way the crossings on a cheque, or to alter cheques which crossings has been obliterated.

6.0 THE ROLE OF THE CENTRAL BANK OF NIGERIA IN HANDLING BANKING MALPRACTICE IN NIGERIA

The world of central banking is one of a variety of structures, functions and powers, which are in them by-product of the economic, political and other realities prevailing in the society. Central Banks Worldwide simply refers to a central monetary authority or an apex financial institution within the entire financial structure promoting monetary stability and sound financial system.[67] In Nigeria, an inquiry under the leadership of G.D Paton was established by the colonial administration in 1948 with the view of investigating bank practices in Nigeria. Before this inquiry, there was no control and regulation of the banking industry. The G.D Paton's report became the basis for the first legislation- the Banking Ordinance of 1952. Amidst rapid growth as a result of the Ordinance was also accompanied with disappointments which led to the failure of few banks in 1958. This necessitated a bill for the establishment of the CBN before the House of Representative in Nigeria.

[67] Money in the World.net, Central Bank of Nigeria, Brief History, available at http://moneyintheworld.net/geo/Africa/bankin/central - bank - Nigeria, Accessed 11/6/2021.

CHALLENGES ASSOCIATED WITH THE LEGAL FRAMEWORK FOR PREVENTION AND PUNISHMENT OF BANKING MALPRACTICE

Several challenges serve as a setback to the effective and efficient implementation of legal framework. These challenges have made it very difficult for the legal framework help in regulating malpractice in the banking sub-sector. Some of these challenges are examined below:

(a) Inadequate Legal Framework

Until recently the Central Bank lacked adequate powers to deal decisively with the problem of banking crisis, and had to obtain government approval before taking any far-reaching corrective action. The law sometimes frustrates the imposition of sanctions on erring operators. It was very tedious and time consuming to amend the laws just as the court process was always prolonged, tortuous and in viewed of overlaps and contradictions of roles played by the regulating agencies.

(b) Regulatory Lapses

Despite the salutary effect of regulatory changes arising from the financial sector reforms between 1986 and 1995, that tended to strengthen the banking sector generally, some of the measures proved burdensome and were counterproductive. For example, the massive and sudden transfer of public sector funds from banks to the CBN in 1989, resulted in the collapse of many institutions, especially the weak banks with prudential lapses.

(c) **Lack of Statutory/Legislative Enactment on Electronic Banking**

The advert of electronic banking has introduced some element of complication in the fight against fraudulent practices in the banking system. The on-going reforms and the emergence of mega-banks have made it expedient for bank to embrace electronic banking. Paradoxically, no specific statutory enactment on Electronic Banking in particular and e-commerce in general. Even banks conducting electronic banking transactions need no special permission to do so from the CBN.

(d) **Constraints of Fiscal Responsibility Act.**
There are several limitations in the federal FRA which have constrained its effectiveness and impact. As the FRA is a federal law, it is non-applicable to the states and local governments, except in debt and borrowing matters, which are on the exclusive Legislative list. Furthermore, while the 36 states were to be 'persuaded' to enact complementary FRAs this omission has watered down any impact that the FRA would have on fiscal discipline. The Fiscal Responsibility Act 2007 was enacted with the primary aim of providing prudent management of the Nation's Resources, ensuring long-term macro-economic stability of the national economy, securing greater accountability and transparency in fiscal operations within the medium-term fiscal policy framework and the enforcement of the nation's economic objectives.[68]

(e) Corruption and mismanagement of public finances:
Corruption and mismanagement of public finances are problematic at all levels of government in Nigeria. Various forms of corruption such as theft, fraud, bribery, extortion, requests for kickbacks, nepotism, and political patronage exist in Nigeria. At the sub-national level, however, the major driver of corruption is the discretionary use of funds by the Executive (Managing Directors of financial institutions, Governors and Local Government Chairmen), and the lack of transparency and accountability in the utilisation of expenditures.[69]

[68] See preamble to the Act.

[69] A vivid illustration of sub-national corruption in a key oil-producing state in Nigeria is provided by Human Rights Watch (2007). In the states and local governments, there is a practice of setting aside public funds for the purpose of maintaining peace and security. These funds are the so-called 'security votes'. However, in practice, security votes amount to a pool of off-budget funds available to the executive for discretionary expenditures, or distributive patronage. The size of security votes for for governors or local Government Chairman can be very

(f) **The Public Financial Management and Fiscal Federalism in Nigeria**

Nigeria has long grappled with the negative effects of oil windfalls, and the management of public finances in the midst of pro-cyclical government spending, substantial fiscal deficits and severe macro volatility. From the onset of the first oil boom in 1973, public financial management in Nigeria has been far from adequate. This has further constrained the effectiveness of fiscal policy as a driver of economic growth, employment, and productivity.

(6) THE IMPERATIVES OF FISCAL RESPONSIBILITY IN NIGERIA

The imperative of well-functioning fiscal responsibility laws is hinged on the following:

(a) Adherence to the principle of transparency, accountability, fiscal discipline, due process and good corporate governance**:** The adherence to the principle of transparency in the preparation of annual budgets by making the budget sessions public, accountability in publishing the financial statements and accounts of the various tiers of government and restrictions from extra budgetary spending, will go a long way in strengthening this major fiscal policy tool. Also important is the extension of the due process compliance to all levels of government.

(b) **Tax Structure**: The constitution already provides for tax assignment to the various tiers of government. The federal government tax assignment dominates tax system, accounting for over 95 percent of total government revenues from this source. This trend contributes to low revenue base at lower tiers of government, yet they are expected to perform major expenditure functions, presumed to be bigger than their revenue base. There is a need therefore to ignite the revenue

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significant for example, in 2006, the Khana Local Government Chairman in Rivers State (in the Niger Region) allegedly received about N60 million (s461,000) for his security vote.

potentials of these tiers of government by increasing their tax powers, with a potential for greater economic growth and strengthening fiscal responsibilities.

(c) **Eradication of Corruption**: Lord Keynes (1936) in his general theory of employment, interest and money, provided robust evidence that fiscal policy could be a very powerful tool for achieving macroeconomic stability. [70]But, in practice, many obfuscating variables entered the picture such that a wide spectrum of outcomes emerges, many of which are sub-optimal. First, using the instrument of soft budget constrain to cure recessions or depressions could be easily opened to abuse, especially in a world ruled by greed, obscene corruption, and rent-seeking behaviour. The evidence suggest that the soft budget constrain has received its grotesque abuse in Nigeria.[71]

(d) **Reduction of Deficits/ Method of financing them Money Creation**: Nigeria has, since most of the 1970s to date, suffered from unsustainable fiscal deficits in her annual budgets. These are mostly financed by the banking system through money creation by the central bank and/ or draw down of external reserves which have same effect as money creation. The effect of this is persistent macroeconomic instability in the form of high inflation, external debt overhand, and high interest rate, unfavourable balance of payment and exchange rate depreciation and increase money supply. If this phenomenon is left unabated, it is bound to derail the objectives of fiscal responsibility.

(e) **Training and infrastructure**: Government regulating institution/ agencies, State and local government staff should be trained properly

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[70] Keynes, J.M., An introduction to Keynes & Fiscal Policy, available at web.uri.edu > acmead > files, accessed 20th May, 2021., see also Keynesian Economic Definition and Fiscal Policy, available at www.investopedia.com > .... > Economics, accessed 20th May, 2021.

[71] Agiobenbo, T.J., Fiscal Federalism and Macroeconomic Stability. In Issues Management Implication for Money Policy in Nigeria, International Journal of Economics and Management (IJENS) Vol.2, No.6 (2003), Pp. 160-170.

trained to acquaint them with new techniques required in budgetary processes with regards to the medium-term expenditure framework. Appropriate, infrastructure such as the information and communication technology (ICT) platform must be provided to every tier of government.

7. CONCLUSION AND RECOMMENDATIONS

This article has examined the major legal regimes /Act saddled with the responsibility for the prevention and punishment banking malpractice in Nigeria and engendering financial stability in the economy and their various roles and functions of engagements. It has also x-rayed some of the challenges confronting them in addressing the incidence of malpractice in Nigeria. These challenges have no doubt, made the fight against malpractice a herculean task. Unless and until they are addressed, banking malpractice will not stop in Nigeria.

In the light of the foregoing discourse, therefore, the following recommendations are pertinent:

1. Adoption and Implementation of International Best Practices in Banking Supervision.

In line with global trends and international best practices, the CBN should adopt the use of modern techniques of supervision, to enhance its surveillance role in the banking system. The modern techniques include on-site supervision, consolidated supervision, risk-focused supervision and cross-border cooperation with supervision agencies in other countries. The CBN should adopt international standards and codes for supervision as a proactive means of detecting early warning signals and preventing banking crisis.

2. Increased Supervisory Surveillance in the Banking System

Apart from the above measures, the CBN has continued to hold regular meeting with individual bank's board management, to discuss issues relating to their operations and performance. In the same vein, it has adopted the holding of period meeting with auditors of banks as a strategy for sharing experience on development in banks as well as to solicit their support to ensure as safe and sound financial system.

3. New Regulation Approach for Enforcing Compliance by Banks

This approach essentially transfers the costs and burden of investigating serious malpractices by banks to those institutions that breach the rule and regulations. The process involves the appointment by the CBN, of a consultant, who must be one of the reputable bank auditors, but not the particular bank's external auditors. The consultant's report, which shall be strictly confidential, shall be submitted to the CBN for consideration and final decision after a fair review of same with the affected bank.

4. Corporate Governance

The CBN should put in place measures to ensure that the banks are well run. It should continue to insist on organizational structures that will enhance transparency, accountability and integrity and required banks to discharge reliable information on their operations to guide all stakeholders in their decision making. A code of conduct should be administered to all bank directors by the CBN, which requires them to disclose their interest in borrowings from their banks either by themselves or related parties and prohibits borrowing in excess of N50,000 without collaterals.

5. Self-Regulation

Given that the regulators cannot be physically present at financial institution at all times, the desirability of self-regulation is very germane. Typically, self-regulation covers authorization, monitoring, investigation and prosecution. The Regulator would confer recognition on Self-Regulation Organizations (SRO's) and provide the enabling environment to perform the aforementioned functions.

6. Capacity Building

It is imperative that both the regulators and staff of financial institutions must be numerate and computer literate. As more and more banks engage in business process re-engineering, there would be need for re-training and up-grading of Information Technology (IT) infrastructure while the advent of electronic banking requires different skills from the ones used for handling of paper-based products. For supervision of automated computer system to be effective, it is imperative that examiners develop capability for auditing through the computer instead of auditing around the computer. Auditing through the computer makes the computer itself an audit tool. The approach is being pursued by the Regulation Authorities in Nigeria by having an Electronic Data Processing Unit in the Bank Examination Department.

Furthermore, this article examines Banking Malpractice as a major problem to the stability of financial institution, especially to the banking sub-sector after the implementation of the liberation of financial sector which was part of the Structural Adjustment Program (SAP) introduced in 1986, it has devastating effects on the lives of depositors and economy in general. Despite the availability of laws, regulations, judicial decision and the ongoing reforms by the Central Bank of Nigeria and reviews of some the laws, Nigerian banks are still considered as one of the unstable in the international space rating, not proactive enough to address some of the fundamental problems affecting the banking industry. This could attribute to lack of strong legal frameworks and want of political and judicial will to enforce the laws. In carrying out the study, the doctrinal method was adopted whereby the focus was on various legal frameworks for prevention and punishment of banking malpractice in Nigeria. The article recommended among others things, that, there is need to establish regulatory goals, crafting regulatory mechanisms that balance efficiency and service delivery goals, good corporate governance and determining the regulator's role in promoting competition and the granting financial independence to the various regulating institutions/agencies to effectively perform their core mandate in the banking subsector in Nigeria.