

**AN APPRAISAL OF THE LEGAL PROTECTION AGAINST BANKING FRAUD AND MALPRACTICES IN NIGERIA\***

**Abstract**

Banks are institutions that hold a pivotal stake in the economic wellbeing and development of a nation. They are at the centre of monetary dealings and transactions in the economy. Healthy and secured banking system and economic stability attract business and investment including Foreign Direct Investment (FDI) into the nation. Of recent, there is a phenomenon at level of fraud in the banking sector in Nigeria leading to various loss of money by banks' customers to fraudsters including bank employees. The weak institutions make it seem that, there are no good laws against this menace, hence the need for this study aimed at attempting an expository appraisal of different fraudulent activities in the banks and the laws against banking fraud and other malpractices in Nigeria. The doctrinal research methodology is adopted in this work which includes the use of primary sources such as the statutes and case law and some secondary sources such as journal articles and text books in data gathering. It is the findings of this work that the high level of banking fraud and malpractices in Nigeria are carried or aided in most cases, by bank workers or the banks themselves. It is therefore recommended that adequate measures be put in place to check the internal workings of the banks security and operations so as to eliminate or reduce this monstrous development.

**Keywords:** Legal, Protection, Fraud, Malpractices.

**1. Introduction**

The financial wealth of a nation and its people are generally entrusted in the care and management of the banks. This is done in the utmost confidence and trust that the monies and other valuables deposited in the banks and any dealings on same shall be transparent and secured at all times. Upon this trust and confidence, the banks owe their customers a duty of care against all forms of malpractices on their money or other valuables<sup>1</sup>. Lately the rate of fraud and other illegal activities perpetrated in banks in Nigeria are alarmingly unprecedented<sup>2</sup>. These criminals operate with high amount of easiness and frequency. They operate as if the banks and the monies therein have no owners or are not in the care of anyone. The depth of information criminal's access relating to customers' bank accounts rightly leads to the conclusion that, insiders in the banks play significant roles in these frauds and malpractices. Sensitive information such as Bank Identification Numbers (BVN); Automated Teller Card Numbers and Personal Identification Numbers (PIN) of customers are usually accessed by criminals, which they use in accessing customers' bank accounts.

**2. Clarification of Key Terms**

**Legal**

Legal connotes anything relating to law. It means anything or activities that are lawful or done according to the provisions of the law. It is anything permitted by law or relating to law<sup>3</sup>. It is anything relating, required or permitted by the law<sup>4</sup>.

**Protection**

It is an action of protecting, or a state of being protected. It is a person or thing that protects someone or something. It is a legal or other formal measures intended to preserve civil liberties and rights<sup>5</sup>. Protection means, to shield from injury or harm; to secure or preserve against encroachment, infringement, restriction or violation, maintain the status or integrity<sup>6</sup>. Here it means the legislatures put in place to prevent fraudulent activities or dealings in the accounts of bank customers.

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<sup>1</sup>Other valuables such as Wills, Share Certificates and other personal documents are also deposited with banks for safe keeping. See Jacob Otu Enyia, *The Law of Banking in Nigeria, Principles, Statutes and Guidelines* (Lagos: Malthouse Press, 2019).

<sup>2</sup>Because of the increase in the use of e-banking and internet in banking, the rate of fraud and other malpractices have rapidly increased in banking these days. People seem to have unrestrained access into customers' accounts for fraudulent dealings. On duty of care by the banks to customers, see *P. Tech Nig Ltd v AG Lagos State* (2005) 3 WRNP. 92, *Okobliemen v UBN Plc* (2018) 15 WRN p. 164 and *Ndoma-Egba v A.C.B Plc* (2005) ALL FWLR (pt 283) p. 152.

<sup>3</sup> Definition from *Oxford Languages Dictionary* at <<https://www.oxfordlanguages.com>> accesses 31<sup>st</sup> January, 2022.

<sup>4</sup>See Catherine Soanes, Sara Hawka, Julia Elcott (eds) *Oxford Dictionary of Current English* (4<sup>th</sup> edn. Oxford University Press) p. 518.

<sup>5</sup> Definition from Oxford Languages *op. cit.*

<sup>6</sup> See <<https://www.thelawdictionary.org>> accesses 31<sup>st</sup> January, 2022

## Fraud

It is a wrongful or criminal deception intended to result in financial or personal gain<sup>7</sup>. It is an act whereby a person or thing intended to deceive others typically by unjustifiably claiming or being credited with accomplishment or qualities<sup>8</sup>. Fraud is a crime of gaining money or financial benefits by tricks or by lying<sup>9</sup>. Categories of fraud include identity theft, phishing, pyramid scheme, forgery or alteration or manipulation of computer files and fraudulent financial reporting<sup>10</sup>. It is also a deliberate act or failure to act with the intention of obtaining an unauthorized benefit either for oneself or for the institution, by using deception or false suggestions or suppression of truth or other unethical means, which are believed and relied upon by others. Depriving another person or the institution of a benefit to which he/she is entitled by using any of the means above mentioned also constitutes fraud<sup>11</sup>.

## Malpractices

This means improper, illegal or negligent professional behavior. It means a dereliction of professional duty or a failure to exercise an ordinary degree of professional skill or learning by one rendering professional services which results in injury, loss or damage. It is also an injurious, negligent or improper practice malfeasance<sup>12</sup>. In business including banking, malpractice is any activity undertaken by a worker, individual or on behalf of the institution which is conducted illegally or without due care to their or the company's responsibility to shareholders, customers, workers or local environment<sup>13</sup>. It is a tort committed when a professional fails to properly exercise his duty to the client. The duty of a professional is generally defined as the duty to follow generally accepted professional standards<sup>14</sup>.

### 3. Types of Fraud and Malpractices in Banks

According to Oluwabiya<sup>15</sup> fraud/malpractices in banks can be divided into three categories namely; (a) Fraud/Malpractices by Banks Employees (b) Fraud/Malpractices by non-employees of the banks and (c) Fraud/Malpractices by banks themselves. We shall discuss this in the order listed above.

#### Fraud and Malpractices by Banks Employees

**Unauthorized Borrowing:** Where employees of a bank borrow from the vault and teller tills without any record kept of it. According to Akinyomi<sup>16</sup> such unauthorized borrowings are done in exchange of the staff post-dated cheque or I.O.U<sup>17</sup> or even nothing and that such unofficial borrowings are more rampant on weekends and during the end of the month when salaries have not been paid. In most cases, unauthorized borrowings is used for very short term and fast businesses which carry deceptive but mouthwatering promises of benefits which in so many cases cannot be realized or achieved. They end up in failures and loss of the money borrowed. When this happens, the bank employee, to cover up and protect his job, is thrown into further fraudulent dealings in customers' monies to enable him balance the cash in the vault<sup>18</sup>.

**Tampering with and Manipulation of the Bank's Computers:** This occurs in either of the stages of data collection, the input processing stage or even at the data dissemination stage<sup>19</sup>. All businesses and transactions in banks nowadays are carried out on computers. Some of the bank employees, to commit fraud, manipulate data provided by customers or manipulate existing ones. This occurs, according to Akinyomi, due to improper input system, virus, program manipulations, transaction manipulations etc<sup>20</sup>.

**Bank Theft:** Like in most organizations, thieves also exist in banks. Some bank employees practically steal customers' money, steal from customers' deposits, steal from vault or strong room and through transfers of monies

<sup>7</sup>See definition from Oxford Languages Dictionary at <<https://www.oxfordlanguagesdictionary>> accessed 1/2/2022 and see also B.A Garner, *Black's Law Dictionary* 9<sup>th</sup> edn. St Paul MN West 2009) p.146.

<sup>8</sup>This definition is however more appropriate to sharp practices which are similar to fraud. See *Oxford Languages Dictionary op. cit.*

<sup>9</sup> See *Collins English Dictionary* at <<https://www.collinsdictionary.com>> accessed 1<sup>st</sup> February, 2022.

<sup>10</sup> *Ibid*

<sup>11</sup> See <https://www.usi.edu>>internalaudit>accessed 1<sup>st</sup> February, 2022.

<sup>12</sup> That definition is according to *Merriam-Webster* at <<https://www.merriam-webster.com>> accessed 1<sup>st</sup> February, 2022

<sup>13</sup> See <<https://www.oxinst.com>>compliance> accessed 1<sup>st</sup> February, 2022.

<sup>14</sup> See <<https://www.law.cornell.edu>> accessed 1<sup>st</sup> February, 2022

<sup>15</sup>See Adeola A. Oluwabiya 'Legal Response to Banking Malpractices in Nigeria' in *Journal of Law, Policy and Globalization* vol. 37, 2015 p.46.

<sup>16</sup>See O.J Akinyomi 'Examination of Fraud in the Nigerian Banking Sector and its Prevention' in *Asian Journal of Management Research online open Access publishing platforms for Management Research* accessed 23<sup>rd</sup> October, 2021.

<sup>17</sup> IOU is a phonetic acronym of the words 'I owe you' and often viewed as an informal written agreement not a binding one.

<sup>18</sup> See O.J Akinyomi *op. cit* p. 186.

<sup>19</sup> *ibid*

<sup>20</sup> *ibid*

from one bank account to another and other financial items without the authorization of the owners. In many instances a brief step out of a cashier's cage by the cashier in the banking hall without locking it, has resulted into stealing from the money left behind before his return<sup>21</sup>. Tellers<sup>22</sup> in a bank have free access to customers' accounts and they do not need the permission of the account owners to access same. They however have an implied permission to do so at the moment a customer account is opened. As earlier mentioned, some of them carry out fraudulent activities in the accounts. This implied permission does not however extend to these illegal dealings of taking, transferring or moving monies from the accounts to another without the authorization of the owner<sup>23</sup>.

**Aiding and Benefiting from Impersonation:** Some bank employees aid third parties to impersonate their customers by surmising the part of someone else with the objective of committing fraud in his or her account in a bank<sup>24</sup>. This can be committed by aiding the third party to obtain sensitive bank documents such as cheque books which are used to commit fraud in customer's account. The bank officials or employees involved in these malpractices reveal the signature specimen of and passport photograph of the customer to third parties who use same in the acts of impersonation from which both the bank employee and the third party benefit from<sup>25</sup>. This is also referred to as identity theft.

**Account Counterfeiting:**<sup>26</sup>In the circumstance, the bank employee commits this fraud working with two bank accounts with the permission or knowledge of one of the customers. Where an unauthorized transfer of money from an account that has a high balance that the banker believes the customer may not have need or want to withdraw within a given time to an account that has little balance. The owner of the account with a high balance is not aware of the fact that money is being transferred from his account illegally to another account. The recipient account owner is however aware of this fraud and the bank employee and himself usually invest the transferred amount in a business they believe has quick turnover and the profit therefrom is shared between them<sup>27</sup>.

**Facilitating Bank robbery:** Some banks robberies are said to have been facilitated by some members of staff of the banks, hence the popular saying that no bank robbery could be successful without an insider. Here, it is the bank employee who gives the robbers information on when the strong room or vault of the bank is stocked with huge amount of money or when the bank intends to move money or bring in money from the Central Bank or other sources. This assists the robbers to strike at the right time<sup>28</sup>. The bank employees are also accused of providing information such as the entrances and specific areas of the banks they would access and how to go about their operations to avoid failures. They also give the robbers information as to the time they would attack<sup>29</sup>.

### **Fraud and Malpractices Committed by Non Bank Workers**

**Phishing:**<sup>30</sup>This involves the stealing of personal information of bank customers such as customer's identity, Internet Personal Identification Number (PIN) credit and debit cards numbers, card expiring date, card verification value (CVV)<sup>31</sup>. This is mostly done through customer's e-mail and other means that look like legitimate means but are fraudulent<sup>32</sup>. This information enables the fraudster to make unauthorized transactions in the customer's

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<sup>21</sup> See Adeola O. Oluwabiyi *op.cit* p.47 and O.J Akinyomi *op cit* p. 186.

<sup>22</sup>A bank teller is an employee of a bank whose responsibilities include the handling of customers' cash and negotiable instruments. In some places, they are known as a Cashier or customer representative. See <<https://www.quora.com>> accessed 3<sup>rd</sup> February, 2022 and see the case of *Okobiemen v UBN Plc* (supra).

<sup>23</sup>See <<https://www.newhorsesup.com>> accessed 3<sup>rd</sup> February, 2022. There are also various reports of trapped ATM cards which bank workers use in withdrawing huge sums of money from customers' accounts while the cards are trapped in ATM machines in their care.

<sup>24</sup> See O.J Akinyomi *op cit* p.186.

<sup>25</sup> *ibid*

<sup>26</sup>Adeola A. Oluwabiyi calls this, falsification of account and forgeries for stealing purposes. See Adeola A. Oluwabiyi *op. cit* p. 47.

<sup>27</sup> Adeola A. Oluwabiyi *op cit* p.47.

<sup>28</sup>See generally Adebayo Williams Adewumi 'Law and the Protection of Commercial Banks in Nigeria against Bank Robbery : Prospects and Challenges' in *Global Journal of Politics and Law Research* published by European Centre for Research Training and Development UK, vol. 3 No 1 April 2015 pp 6-22. 'Bank Robberies, Fraud Involving Staff Hit Over N12bn' in the *Sun Newspaper*, 18<sup>th</sup> august, 2020 by Romanus Okoye at <<https://www.sunnewsonline.com>> accessed 3<sup>rd</sup> February, 2022.

<sup>29</sup>See the *Daily Post* of September 28, 2015 which published this headline, 'Bank robbery: Labour calls for amend to casual work force in financial institutions'

<sup>30</sup> Ordinarily, phishing means the practice of catching fish by throwing bait into the water.

<sup>31</sup>It is also known as a card's security code. This is a 3 digit number on Visa, MasterCard and Discover branded credit and debit cards on the American Express branded credit or debit, it is a 4 digit numeric code. See <<https://www.ccvnumber.com>> accessed 3<sup>rd</sup> February, 2022.

<sup>32</sup> See <<https://www.financialexpress.com>> accessed 5<sup>th</sup> February, 2022

credit and debit cards or bank accounts<sup>33</sup>. Sometime the phishers also make use of calls to get the delicate financial data from account owners pretending to be bank officials<sup>34</sup>.

**Smishing:** It is a fraudulent practice of sending text message to unsuspecting bank account holder purporting to be coming from genuine sources with the aim of persuading them to reveal their personal information about their bank accounts such as password, credit card numbers<sup>35</sup>. The fraudsters in some cases send a link on the text message where the receivers are asked to click on and when clicked on a visit is made to the fraudulent website where some information is downloaded for the use of the fraudster which helps them to get data from the accounts.

**Skimming with Swiping Machine:** Swiping machine is high-speed thermal printer. It is a device that allows customers to swipe the magnetic strip of a credit card through a slot and identification number (PIN) for verification<sup>36</sup>. Its main function is to process payment through credit and debit cards<sup>37</sup>. Fraud in the process of using the swiping machine is committed by cloning the card and obtaining the card details of the affected account. This cloning is also referred to as skimming and the devices used to copy the card information are as well referred to as skimmers<sup>38</sup>. The skimmers are calculatedly attached to the Automated Teller Machine (ATM) to capture information from credit and debit cards used in the ATM<sup>39</sup>.

**Money Laundering:** This is a process through which the origin of illegally gotten money typically by means of transfers involving foreign banks or legitimate businesses<sup>40</sup>. Money laundering is a practice of making money that was gained through criminal means such as smuggling weapons, money obtained by false pretences etc. look as if it came from legitimate business source<sup>41</sup>. According to the Encyclopedia Britannica<sup>42</sup>, money laundering can be either a relatively simple process, undertaken at the local or national level, or a highly sophisticated one that exploits the international financial system and involves numerous financial intermediaries in a variety of jurisdiction.

### Fraud and Malpractices Committed by the Bank

**False Declaration of Assets:** Some banks in compliance with banking rules<sup>43</sup> of annual declaration of their asset, do it fraudulently or falsely to attract big customers with big investments into the banks. These banks are encouraged to do this because most customers insist on knowing the assets standing of banks before they can invest in it<sup>44</sup> because it is believed that a bank with strong assets base cannot fail easily and when it does investors funds can easily be recovered.

**Round-trip Transaction or Lazy Susans:** According to the Wall Street Journal, it is a form of barter that involves a company selling an unused asset to another company while at the same time agreeing to buy back the same or similar asset at about the same price<sup>45</sup>. Round tripping also refers according to CHRON to series of transaction between companies that bolster the revenue of the companies involved but that in the end do not provide real economic benefit to either company. While not necessarily illegal, round tripping is at best disingenuous<sup>46</sup>. Adeola<sup>47</sup> stated that, round tripping of funds is a practice whereby a foreign bank guarantees a local loan for a local project. The foreign bank would be a cognate bank of the local bank who agrees to connive for the foreign

<sup>33</sup> *Ibid.* this is mostly easy to perform from trapped credit or debit cards in ATMs

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid* and see also Josephine Uba, 'Cybercrimes and Cyber laws in Nigeria: All you need to know' *Olisa Agbakoba Legal (OAL)* at [www.mondaq.com](http://www.mondaq.com) accessed 5<sup>th</sup> February, 2022.

<sup>36</sup> See <<https://www.plumpos.com>> accessed 5<sup>th</sup> February, 2022.

<sup>37</sup> See <https://www.techjock> accessed 5<sup>th</sup> February, 2022

<sup>38</sup> See <https://www.bankbazzar.com> accessed 5<sup>th</sup> February, 2022.

<sup>39</sup> *Ibid*

<sup>40</sup> See Aedola A. Oluwabiyi *op cit* p. 49 and *Oxford Languages Dictionary* at <<https://www.oxfordlanguages.com>> accessed 1<sup>st</sup> February, 2022 and see also Maurice Ogbonnaya 'Cybercrime/Nigeria's Financial Institutions' Vulnerability to Cybercrime at [enactafitica.org](http://enactafitica.org).

<sup>41</sup> *Ibid* and see generally, Uchenna Jerome Orji 'Protecting Consumers from Cybercrime in the Banking and Financial Sector: an Analysis of the Legal Response in Nigeria in *TILBUG Law Review (Feb 2019)* Journal vol.24, No 1 Pp 105-124 at <<https://www.doi.org/10.53341.137>> accessed 2<sup>nd</sup> February, 2022.

<sup>42</sup> Those laundering money do so for two reasons. Firstly to avoid the identification of the perpetrators and being linked to the crime that gave rise to the illegal proceeds known as predicate offences. Secondly, to make the use of the illegal proceed by the criminals look as if they were from a legitimate origin. See <<https://www.britannica.com>> accessed 5<sup>th</sup> February, 2022.

<sup>43</sup> See *Banks and other financial Institution Act 2020 SS. 9 & 10*.

<sup>44</sup> Thomas Jefferson invented the Lazy susan in the 18<sup>th</sup> Century though they were referred to as dumb waiters. The lazy susan is a turn table rotating tray placed on table or counter top to aid in distributing food which was liken to what usually happens in round tripping transactions.

<sup>45</sup> See <<https://www.bibguru.com>> accessed 6<sup>th</sup> February, 2022.

<sup>46</sup> See CHRON Newsletter at [smallbusiness.chron.com](http://smallbusiness.chron.com) accessed 6<sup>th</sup> February, 2022.

<sup>47</sup> See Adeola A. Oluwabiyi *op. cit* p.50.

bank to guarantee the Nigerian bank loan to carry out the project. The Nigerian bank would then grant the loan. The execution of the project would be said to have failed and the Nigerian bank would then call on the foreign bank to remit the amount of the foreign exchange provided for in the guarantee for the completion of the project. When the foreign exchange is transferred, it would be sold at extortionate rate locally. The local parties would make their deduction and send the remaining amount to the foreign bank through the buying of foreign exchange locally. The remaining money is then shared among all the parties. This does not in any way amount to a foreign direct investment as it is made to look like.

**Illegal Forex Trading:** Some banks and other financial institutions in Nigeria do not adhere to Central Bank of Nigeria regulations on forex trading<sup>48</sup>. Some of the banks make use of brokers that have license to do so but are trading for themselves. While forex trading is legal, the industry is dominated by scams and bad operators<sup>49</sup>. Criminals in the banking sector trick people into investing in illegal foreign currency schemes. They always promise them lucrative investment opportunities where traders can make high returns within a very short period of time. Banks sell at very extortionate rate to their customers and also put-by their officially purchased foreign exchange to make it look scarce so they can sell for higher rate<sup>50</sup>.

**Exceeding Lending Limits:** A lot of banks in Nigeria lend beyond their regulated lending capacities<sup>51</sup>. Some of these breaches, according to Adeola<sup>52</sup> may be due to the quest for excessive profits such as operating policies guidelines on sectoral allocations against the guide line for the sectoral allocations of such loan funds.

#### **4. Causes of Bank Malpractices and Fraud**

##### **Mode of Recruitment of Staff**

Some of the banks where these malpractices and fraud are perpetrated do not follow extant guidelines for recruiting their staff. Some recruit their relatives or those recommended by the directors and major shareholders of the banks or financial institutions<sup>53</sup>. This encourages the staff to go into these frauds and malpractices because they know or believe they are protected against any discipline by their god fathers in the banks and after all, some members of staff who were found culpable in these malpractices and frauds were as well insulated by the big men in the organizations.

##### **Poor Remuneration**

Where employees of a bank are not well paid and therefore cannot meet their immediate financial needs; they are without saying very likely to engage in fraud and other malpractices to illegally or illegitimately make ends meet. In Nigeria, the salaries and allowance of most establishment including banks are so poor that workers are pushed into looking for other means of meeting their financial needs including fraud and malpractices in the work places<sup>54</sup>.

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<sup>48</sup>The Central Bank of Nigeria (CBN) regulation on foreign exchange market stipulates that retail transaction to be settled at a rate not exceeding 20 percent above the interbank market rate. CBN is to provide foreign exchange to all commercial banks directly for onward sale to customers. All banks would receive amounts commensurate with their demand per week which would be sold to customers who meet usual basic documentary requirements. See CBN press release: *New Policy Actions in Foreign Exchange Market* at [www.cbn.gov.ng](http://www.cbn.gov.ng) accessed 6<sup>th</sup> February, 2022. However, the CBN has announced plans to stop selling foreign currency (forex) – US dollars, Euro, Pound Sterling, among others to banks. The apex bank had put Deposit Money Banks (DMBS) on notice that it will stop selling forex to them by end of 2022. See <https://www.dailytrust.com> accessed 16<sup>th</sup> February, 2022.

<sup>49</sup> See <https://www.cbn.gov.ng> accessed 7<sup>th</sup> February, 2022.

<sup>50</sup> *Ibid*.

<sup>51</sup>The CBN directed all commercial banks operating in Nigeria to lend out up to 60% of their customers' deposits and maintain a minimum loan to deposit ratio of 60% as at September 2019 which would be reviewed quarterly. Deposit banks should not exceed 20% of the bank's shareholders' fund unimpaired by losses for individual or single persons and a group of related borrowers. Microfinance banks are to offer loan of 1% to individuals which the maximum loan that should be offered to group borrowers like cooperative should not exceed 5% of the microfinance bank shareholders' fund. See Fakoyejo Olalekan, 'MFBS, DMBS, others get new lending limit directive from CBN. See <https://www.nairametric.com> accessed 7<sup>th</sup> February, 2022.

<sup>52</sup> See Adeola A. Oluwabiyi *op.cit* p.50 and Akinyomi O.J *op. cit* p.186.

<sup>53</sup>*Ibid* and see also Osei-Assibey Mandella Bonsu et al, 'Corporate Fraud: Causes, Effects and Deterrence on Financial Institutions in Ghana' in *European Scientific Journal* October, 2018 edition vol 14 No 26 Pp 1-21, Tika Ram and Khagendra Achanya 'Banking Frauds: Causes and Prevention' in *Journal of Banking, Finance and Insurance* vol 2 August, 2021 at <https://www.bfin.com.np> accessed 7<sup>th</sup> February 2022 and see generally Folowosele Folarin Akinwale, Ikpefan Ochei Aitemen and Sebor Aregban 'Electronic Fraud: An Emerging Cause of Bank Failure in Nigeria Deposit Money Banks' in *Journal of Money Laundering Control* vol 25 issue 1, November, 2021 at <https://www.emerald.com> accessed 7<sup>th</sup> February, 2022.

<sup>54</sup> See Adeola A. Oluwabiyi *op.cit* p.51, Akinyomi O.J *op. cit* p.186.

### **Lack of Proper Training and Retraining of Staff**

Some banks in Nigeria do not train their staff. This is in most cases caused by the high target of profits by the bank. Therefore no funds are set aside for this all important aspect of the workforce. An untrained workforce is prone to malpractices and fraud<sup>55</sup>.

### **Overburden Staff**

Again in the quest to make more profit with less, banks in Nigeria are in most cases understaffed leading to assigning duties to staff beyond their capacities, and in some cases even to unqualified ones. This creates room not just for the staff to be found going into one malpractice or the other, but are vulnerable to leaving gaps for fraudsters to pick on and to commit fraud<sup>56</sup>.

### **Poor Compliance and Monitoring Level**

Inadequate infrastructure and equipment in some banks have created lee ways for fraud and other malpractices to be perpetuated in the banks. Simple machines such as counting machines, thumb impression capturing machines etc are shared by Cashiers in the banks. Equipment that help in monitoring and prevention of fraud and malpractices are absent or inadequate in some banks, making it very easy for fraud and other malpractices to be carried out in the banks<sup>57</sup>.

## **5. Legal Framework for Fighting Banking Malpractices and Fraud**

In order to have and operate a conducive and secured banking sector in Nigeria, certain laws were put in place to regulate and control the banking sector and prevent malpractices and fraud in banking. These laws include;

### **Bank and Other financial Institution Act<sup>58</sup>**

To ensure that every business and engagement in banking and other financial transactions are regulated and monitored accordingly the law, the Banks and other Financial Institutions Act<sup>59</sup> made mandatory provision for such institution to have an operational licence issued to it and must be a company duly incorporated in Nigeria and provided punishment for anyone who breaches the law<sup>60</sup>. Managers or any other officer of a bank are prohibited whether directly or indirectly to have personal interest in any advance, loan or credit facility and if they have any such interest, it shall be declared yearly to the bank and no advance or credit facility shall be granted to any person without an authorization in accordance with the rules and regulations of the bank<sup>61</sup>. Likewise a Director of a bank who has any interest directly or indirectly in the grant of an advance, loan or credit facility shall declare<sup>62</sup> the nature of such interest before the meeting of the board of directors of the bank at which the request for the facility is first taken into consideration and same declaration shall also be made where a director is interested in a loan, credit or advance facility in another bank. A manager or any officer who breaches the law, shall on conviction be liable to an imprisonment for a term of not less than three years or a fine of not less than N5, 000.000 or both<sup>63</sup>. Where it is a director that breaches the law, he shall on conviction be liable to a term of imprisonment for not less than three years or a fine not less than N5, 000.000<sup>64</sup>. The Act<sup>65</sup> also made various provisions regarding proper book keeping by the banks to put in check any fraudulent malpractices by the bank or in the bank. Proper books of account are to be kept with respect to all transactions, if such books are necessary to explain such transactions and give a true and fair view of the state of affairs of the bank or are in line with accounting standards.

Every bank is required by the Act<sup>66</sup> to submit to the bank<sup>67</sup> a statement of its assets and liabilities, advances and other assets at its head office and branches in Nigeria and branches or subsidiaries outside Nigeria as may be specified by the bank. Every bank shall submit such other information, documents, statistics or returns as the bank may deem necessary and any bank which fails to comply with any other requirement above is liable to a penalty

<sup>55</sup> *Ibid*.

<sup>56</sup> *Ibid* and see also types of Banking Fraud at sqnbankingsystem.com accessed 7<sup>th</sup> February, 2022.

<sup>57</sup> See Tika Ram and Khagendra Acharya *op. cit*.

<sup>58</sup> Cap B3, Laws of the Federation of Nigeria (LFN), 2004

<sup>59</sup> See the *Banks and Other Financial Institution Act (BOFIA) S.2(1)*

<sup>60</sup> See *BOFIA S.2(2)(a)(b)(c)(d)*. the punishment ranges from a term of imprisonment of not less than five years to a fine of not less than N50,000,000 or two times an amount of the cumulative deposits or other amount collected or both imprisonment and fine.

<sup>61</sup> See *BOFIA S.17 (1)(a) & (b), (2)*.

<sup>62</sup> See *BOFIA S.17 (3)(4)(5)(6)(7)(8)(9)(10)(11) & (12)*

<sup>63</sup> See *BOFIA S.17(2)*.

<sup>64</sup> See *BOFIA S.17(12)* other provisions regulating granting of loans, credit and advance facilities are also provided in Sections 18 and 19 etc.

<sup>65</sup> See *BOFIA S.23 (1)(2)(3)(4) and (5)*

<sup>66</sup> See *BOFIA S.24(1)(a)&(b), (2)*.

<sup>67</sup> The bank here refers to the Central Bank of Nigeria (CBN) and this shall be done not later than five days after the last day of the month or such other intervals as the bank may direct.

not less than N3, 000,000 and N500, 000 for each day during contravention<sup>68</sup>. Every bank or other financial institutions shall not later than month after the end of its financial year, forward to the bank for approval and publish its financial statement prepared in accordance with relevant accounting standards as may be prescribed by relevant authorities<sup>69</sup>. Failure by any bank to comply with the above provisions is liable to a penalty of not less than N5, 000,000 and an additional penalty of N100, 000 for each day the contravention persisted<sup>70</sup>. Any director of a bank who fails to take all reasonable steps to secure compliance with any of the provisions of law commits an offence and shall be liable on conviction to a penalty of not less than N2,000,000 and the Governor<sup>71</sup> may suspend or remove such director from office<sup>72</sup>. Every bank shall appoint a firm of auditors<sup>73</sup>. The Governor shall have powers to issue regulations, guidelines and policies to banks and other financial institutions<sup>74</sup> and shall also appoint one or more officers of the bank not below the rank of director to be charged with supervisory functions<sup>75</sup> and direct them to carry out examination of banks and other financial records<sup>76</sup> or special investigation where the need arises<sup>77</sup>. Where any book, document or information is not made available as required for examination or false presentation is made and the bank presenting is found guilty on conviction, it shall be liable to a penalty of not less than N20, 000,000<sup>78</sup> and any approved auditor who contravenes or deliberately fails or negligently acted, shall be liable on conviction to a fine of not less than N2, 000,000<sup>79</sup>. These provisions are conscientiously put in place by the legislature to ensure that banks work with the aim of safeguarding the funds of the bank and customers from any form of malpractices or fraud.

### **Bank Employees etc (Declaration of Asset) Act**

This law was enacted to ensure that, assets or wealth acquisition by all bank employees are genuine and acquired through genuine means. The Act<sup>80</sup> requires that every employee of bank discloses in full all his assets within fourteen days on the commencement of the Act<sup>81</sup> and within fourteen days for new employees of resumption of duty<sup>82</sup>. This is to hold the employee accountable for any additional asset he or she acquires within the period of the employment and on leaving the bank. The declaration is to be made yearly<sup>83</sup>. It is an offence for a bank employee to earn asset whose value is above his legitimate income. And where found guilty, the employee shall be liable to a term of imprisonment of 10 years and in addition such asset or its money value shall be forfeited to the federal government. An employee of a bank shall not own or operate a bank account in any foreign bank<sup>84</sup>.

### **Exchange Control Anti-Sabotage Act**

This was made to regulate and control the flow of currencies between Nigeria and other countries to avoid negative effects on the national liquidity and to preserve the value of the domestic currency, maintain a favourable external reserves position and ensure eternal balance without compromising the need for internal balance and the over-all objectives of macroeconomic stability<sup>85</sup>.

### **Foreign Exchange (Monitoring and Miscellaneous Provisions) Act<sup>86</sup>**

The Act established an autonomous foreign exchange market and to provide for the monitoring and supervision of the transactions conducted in the foreign exchange market. Under the Act<sup>87</sup> the Central Bank of Nigeria (CBN)

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<sup>68</sup> See *BOFIA S.24(2)*.

<sup>69</sup> See *BOFIA S.26*

<sup>70</sup> See *BOFIA S. 26(5)*.

<sup>71</sup> Governor here refers to the CBN Governor.

<sup>72</sup> See *BOFIA S.27(2) & (3)*.

<sup>73</sup> See *BOFIA S. 28(1013)*

<sup>74</sup> See *BOFIA SS 29(108) and 30*

<sup>75</sup> *ibid*

<sup>76</sup> See *BOFIA S.31(1-4)*

<sup>77</sup> See *BOFIA S. 32(1-4)*

<sup>78</sup> See *BOFIA S. 29(6)*

<sup>79</sup> See *BOFIA S.28(2)* other financial institution or specialized banks where in breach shall when found guilty pay a penalty not less than N2,000,000 and additional penalty of N50,000 for each day in default

<sup>80</sup> See *Bank Employee (Declaration of Asset) Act S. 1(1) &(2)*. See Cap B1, LFN, 2004.

<sup>81</sup> That is for those already in banks employment before the commencement of the Act.

<sup>82</sup> For the avoidance of doubt, bank employees include the governor, chairman and members of the Board, Managing Directors, General Manager, Manager, Examiner, Inspector, controller, Agent, Supervisor, Officer Clerk and other categories of bank workers.

<sup>83</sup> See *Bank Employee (Declaration of Assets) Act, S. 4(1)*.

<sup>84</sup> *Ibid S. 7(1) and (2)*. There are moves by the federal government to amend the Bank Employees etc, (*Declaration of Asset Act* to include spouses and children of employees and now asserts declaration to be made to the Code of conduct Bureau and no more to the Secretary of the Government of the Federation (SGF).

<sup>85</sup> See <<https://www.cbn.gov.org>> accessed 5<sup>th</sup> February, 2022. See Cap F3 LFN, 2004

<sup>86</sup> Cap F34 LFN 2004.

<sup>87</sup> See *Foreign Exchange (Monitoring and Miscellaneous Act S.1(2)* and see Adaji Ekoyo Aishatu, 'Foreign Exchange (Monitoring and Miscellaneous Provisions Act: Proposal for Reform' *Conference paper presented at the National Workshop*

may, with the approval of the Minister<sup>88</sup> issue from time to time, guidelines to regulate the procedures for transactions in the market and for such businesses. The CBN has the exclusive powers to appoint any bank or non banking institution as an authorized dealer or authorized buyer of foreign currency which has shown adequate resources and capacity to operate in accordance with the provision of the Act<sup>89</sup>. The CBN also has powers to revoke such appointment if it has reason to believe, it is in the national interest that the appointment should not continue<sup>90</sup>. The CBN shall supervise and monitor the operation of the market to ensure its efficient performance.<sup>91</sup>

### **Cybercrime (Prohibition and Prevention etc) Act**

The purpose of the law is to provide an effective unified legal regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cyber crimes in Nigeria<sup>92</sup>. The Act prohibit unlawful access to a computer system or network and where this is committed, the committer on conviction is liable to a term of imprisonment of not less than two years or a fine of not less than N5,000,000 or both<sup>93</sup>. Any person who carries out or counsels to be carried out an unauthorized modification of any data held in any computer system or network, commits an offence and liable on conviction to imprisonment of not less than 3 years or to a fine of not less than N7,000,000 or to both penalties<sup>94</sup>. The unauthorized use or manipulation of computers to cause any loss of property to another by altering, erasing, imputing or suppressing any data held in any computer, commits an offence and is liable on conviction to imprisonment of a term not less than 3 years or to a fine of not less than N7,000,000 or both<sup>95</sup>. The law also prohibits identity theft<sup>96</sup>, cyber stalking<sup>97</sup>, cyber squatting<sup>98</sup>. The banking industry has within these recent times suffered a lot of malpractices and fraud perpetrated through the computer system and the network. This seems to be the easiest means through which bank customers' funds are stolen or manipulated.

### **6. Conclusion and Recommendations**

The introduction and full operation of computers and network or electronic banking in Nigeria came with a lot of problems including easement of fraudulent activities in the banking sector. In Nigeria the system seems to be very porous as criminals are making a lot of wealth from fraud committed in banks. The laws regulating banking activities in Nigeria meant to safeguard customers' funds are good but their level of enforcement is poor due to weak institutions, equipment and knowledge. We therefore recommend that specialized institutions be created and the existing ones strengthened to improve the regulation and monitoring of banking businesses and prevent the activities of fraudsters in the banking sector.

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*on the Reform of the Foreign Exchange (Monitoring and Miscellaneous Provisions Act Cap F 34 LFN, 2004 at Abuja <www.researchgate.net> accessed 10<sup>th</sup> February, 2022.*

<sup>88</sup> The minister here refers to the minister incharge of finance.

<sup>89</sup> See FEMMPA, S. 5(1) and (2).

<sup>90</sup> *Ibid* S.6 (1), (2), (3).

<sup>91</sup> *Ibid* S.8 (1) and (2) and see Kabiru Garba Muhamad, 'A Critical Analysis of the Conformity of Extant Banking and Related Laws with Electronic Banking in Nigeria' at *Journal of Law, Policy and globalization*, vol. 34, 2015

<sup>92</sup> See Cap.C23 LFN, 2004.

<sup>93</sup> See the *Cybercrimes (prohibition and Prevention etc) Act* (hereinafter referred to as CPP Act) S.6(1) &(2).

<sup>94</sup> *Ibid* S.8 (1), (2) & (3).

<sup>95</sup> *Ibid* S.12 (1) & (2)

<sup>96</sup> *Ibid* S.13

<sup>97</sup> *Ibid* S. 15 (1) & (2)

<sup>98</sup> *Ibid* S. 16(1), (2) & (3) and see also F.E. Eboibi, 'Critical Exposition of the Nigeria Cyber crimes (prohibition, Prevention etc) Act 2015 vol.5 at de/sulawre view.com accessed 10<sup>th</sup> February, 2022 and the 'Nigeria cyber Crimes Act 2015 and its implications for financial institutions and service providers', July, 2016 at <www.financierworldwide.com> accessed 10<sup>th</sup> February, 2022.