

Original Research Article

ASSESSING THE RELATIONSHIP BETWEEN REGULATORY FRAMEWORK AND FORENSIC ACCOUNTING, THE NIGERIAN EXPERIENCE.

BY

ABSTRACT.

The primary objective of this study is to investigate the relationship between regulatory frameworks and forensic accounting practice in Nigeria. The study adopted a survey research with questionnaire drawn to elicit responses. The results of this study show that while Nigeria Evidence Act 2011 as amended and EFCC Act 2000 give much impetus and legal backing to the effective functioning of forensic accountants in Nigeria but Political will, enabling environment and modern infrastructures which are necessary in combating financial crime cannot be ignored.

Keywords: regulatory framework, forensic accounting, corruption.

1.0 INTRODUCTION

Fraud and corruption has affected the living condition of citizens of third world countries negatively and Nigeria is not an exception. It is alarming and indeed devastating. Globally, fraud and financial irregularity are severe problems of concern. It is a major concern to developing nations especially in Africa. Individuals perpetuate fraud and corrupt practices according to the capacity and opportunities open to them in their organization. The proliferation of e-commerce has led to an increasing e-fraud in recent times, which in turn has meant an increasing demand for forensic accountant [Winstonchew @ kpmg' com. Ng] Except where there is no regulation, individuals or organizations affected by the fraudulent or corrupt practices will want to seek redress using institutions like the police and the law court. In more recent times, the accountancy and legal professions work very closely, with forensic Accountants acting as expert financial witness in court cases. So, far from being a new practice forensic accounting except for Nigeria has long being part of accounting profession. While it took the back seat in the early 20th century with general accounting taking a greater role, it is now merely returning to its traditions. Today, forensic accountants are involved in a wide range of cases from more mundane family law and commercial matters through wide range criminal investigations. In Nigeria, there are growing financial fraud cases, bank failures, recent stock market scans, allegation of wide- wipe out of the finances of the Nigerian stock exchange, failure of non-banking financial companies and failure of regulatory mechanism. To curb it requires extra investment in forensic accounting skills. Other studies have examined the link between regulatory structures and incentive to corruption. Several sources of corruption arise when pervasive regulations exist and government officials have an excessive degree of discretion in applying them. Private parties may be willing to pay bribes to government officials in order to obtain pure rents that the regulations may generate. Tanzi [1994] argues that the problem become worse when regulations lack simplicity and transparency.

It is very common in Nigeria that investigation of major financial crimes is handled by ordinary investigating officers who after spending sometime in investigation of conventional crime cases involving complex and intricate financial records which must be analyzed to unearth crime or the unique modes operandi adopted by the white collar criminals, the result is obvious, the case dies a natural death and

48 criminals roam freely on our streets as investigating police officer soon gets bored
49 with cumbersome financial records exposing his lack of specialized knowledge and
50 qualification/expertise. These economic and financial crimes are the greatest threat
51 to natural economic development. As the practice in developed economies
52 appropriate legislation was enacted to prosecute all corrupt conducts including
53 unjust enrichment. These laws include, the economic and financial crimes
54 commission Act 2004, money laundering Act (Prohibition) Act 2011, Evidence Act
55 amended 2011, the corrupt practices and other related offences Act 2000. The key
56 issue in all these laws is the fight against corruption, but would these laws enhance
57 the effective practice of forensic accounting in Nigeria?The forensic Accountant
58 must have extensive experiences in investigation because some of the financial
59 documents are technical in nature.A good case can be destroyed by incompetent
60 prosecution. Forensic accounting is like a bridge which connects accounting system
61 to the legal system in Nigeria. Williams (2002) sum forensic accounting to be a
62 sphere of professional practice thatspans the boundaries of law, accounting,
63 business, and the economy.The study is to examine the relationship between
64 regulatory framework and forensic accounting in Nigeria.

65 The remainder of this paper is organized in the following manner. Section2 provides
66 development of the theoretical framework that depicts the relationships under
67 investigation. Section 3 presents the sample description and measures. The results
68 of the data analysis from the survey follow in section 4. Finally, discussion and
69 conclusions are presented in section 5.

70 To test the relationship between these variables the following hypotheses are
71 formulated.

72 H₁. There is no significant relationship between Evidence Act and litigation support
73 services

74 H₂.There is no significant relationship between Evidence Act and investigative
75 Accounting.

76 H₃ There is no significant relationship between EFCC Act and litigation support
77 services.

78 H₄ There is no significant relationship between EFCC Act and investigative
79 accounting.

80

81 2.0 Theoretical framework

82 The forensic accountant, being a bridge between accounting and the law should be
83 well acquainted with court processes that include procedure, etiquette and the
84 presentation of evidence in court. From businesses , government organizations,
85 regulatory authorities, and the courts, evidence indicates that a high level of
86 expertise is necessary to analyze current complicated financial transactions
87 andevents (Razaee, Crambley and Elmore, 2006) As a result, forensic accounting
88 has been thrown into the forefront of the crusade against financial deception
89 (Rumaswanly,2005). Crambley (2001) traced the history of forensic accounting to an
90 1817 court decision. He also stated that a young Scottish accountant'sissue on
91 forensic accounting is gaining worldwide attention especially the multinational
92 institutions. Companies in Nigeria are already geared towards its practice having
93 found that they have the ability to quantify damages sustained by parties whether or
94 not involved in legal disputes and can assist in resolving disputes even before it gets
95 to the court room. One of the most important aspects in the practice of forensic

accounting is to ensure that information obtained must be of such quality and obtained in such a manner that the courts of law can accept (Edwards, 2012). As a sphere of professional practices that spars the boundaries of law, accounting, business, and economy, civil and criminal procedures are especially important. This is because they define the logical steps that are followed in investigations, criminal and civil litigation. For forensic accounting to be effective there must be a regulatory framework as it is in the developed economies. For instance, the United States of America's legal system is more than what lawyers called "black letter law" (technical legal rules to be applied in a particular area which are most often largely well established and no longer subject to reasonable dispute). While a good lawyer might be able to tell what the law is in well settled areas, one small change in the facts may alter the analysis. Similarly, one small change in the evidence admitted at trial can change the outcome. Handling information that might form the underpinnings of litigation and full complete disclosure of facts to your attorney, are critical indeed.

Being a good forensic accountant is extremely important; there are circumstances in which an attorney may opt for a particular tactic that, in hindsight, was not the best choice despite the fact that it was well thought out. Judgment calls by an attorney or a judge in admitting evidence, the need to properly present evidence, the need to properly preserve the record so that the dispute is alive for an appeal, all occurring simultaneously in a dynamic process, are all part of what makes litigation so interesting and yet so uncertain.

A remarkable note about the differences between civil and criminal trial is that the burden of proof is different in two systems. In civil trial, the plaintiff must prove his or her case to hold in the evidence (more than 50 percent), while the standard in a criminal trial; the government must prove its case beyond a reasonable doubt.

Before the Evidence Act of 2011, the sections of the Nigerian legal system which recognized forensic evidence was the Economic and Financial Crime Commission (EFCC) Act 2002 which was also built up from the existing framework in the United States of America

2.1 NIGERIAN EVIDENCE ACT 2011 AS AMMENDED

The Nigerian evidence act deals basically with the procedures to follow in the course of prosecution, it describes how to tender your evidence, should the document be certified or not, as in Nigeria all public documents are to be certified, the forensic accountant should be knowledgeable about the admissibility of all financial statements/documents he is presenting to the court of law as this is embedded in the regulatory framework of the forensic accounting profession. Judges of recent have had cause to frown at the inappropriateness of the provisions of the extant Evidence Act in resolving legal issues in the 21st century with recourse to advancement in the modern technology especially in the use of computers to commit crime. In essence the validity of the evidence Act and its nation-wide application was derived from the constitutions which further strengthened its import by repositioning evidence matters under the exclusive list (S.4 of 1999 constitution)

2.2 ECONOMIC AND FINANCIAL CRIME (EFCC) ACT 2000

The Economic and financial crimes commission (EFCC) is a Nigerian law enforcement agency that investigates financial crimes such as advance fee fraud

(419) and money laundering, counterfeiting, illegal change transfer, market fraud, fraudulent encashment of negotiable instruments or fraudulent diversion of funds. Nuhu (2004) admits that cases of financial crimes are complex and complicated which require quality prosecuting counsels. The forensic accountants fit in this gap. While forensic accountants usually do not provide rulings or decisions as it relates to courts, the work performed and reports issued will often provide answers to how, where, what, why, and who of any financial crime was committed. Forensic accountants have and will continue to evolve in terms of utilizing technology to assist in engagements. To identify anomalies and inconsistencies, it is important to remember that it is not the forensic accountants that determine fraud, but instead the court” (David Malamed, 2005). The structure of the EFCC act should incorporate the forensic accounting department.

2.3 LITIGATION SUPPORT SERVICES

Litigation support is the process of providing consultation and support service to attorneys with regard to current and pending cases. Awojori and Asaolu (2009) assert that forensic accountants provide litigation support service which is the provision of assistance of an accounting nature in a manner involving existing or pending litigation. Litigation support services tackle each case with a common sense approach; doing what’s necessary to accomplish the clients economic and strategic goals. It involves (1) pre- collection audit with early data assessment reporting, forensic collection of both structured and unstructured data, and incremental collection for ongoing cases. (2) E- discovery processing and early case Assessment (3) Full- service online case review from data loading to production to opposing counsel. It include free workflow planning, case set up, consulting, project management and training (4) electronic delivery and storage of pleadings, court orders and legal documents. A litigation support service is one of the two responsibilities of forensic accountants.

2.4 INVESTIGATIVE ACCOUNTING

Investigative Accounting is often associated with investigation of criminal financial matter. A typical investigative accounting assignment would be an investigation of employee theft, securities fraud, insurance fraud, kickbacks and proceeds of crime. Accounting practices are and will remain the subject of intense public and regulatory scrutiny. Forensic accountant’s knowledge and investigative methodology bring clarity and comprehension to the complex accounting issues in dispute and investigative matter. Investigative accounting reacts quickly and confidentially to safeguard assets and reputation, resolve matter with minimum description to the business and prevent recurrences by implementing effective controls. These approaches enable them to prepare reports and presentations that stand up to the toughest scrutiny’

2.5 CHALLENGES OF FORENSIC ACCOUNTANTS IN NIGERIA

2.5.1 High rate of E-crime.

E –crime is a major concern to businesses and economic growth in Nigeria. The fast pace of development in ICT has contributed immensely to the increase of cyber-crime. Longe and Chemeke (2008) list the consequence of ICT to include acts of phishing, cyber terrorism, electronic spam mails, cyber stalking and fake copy-cat website. Thus, the forensic accountants need to be proactive to survive this high level criminality.

2.5.2 WEAK JUDICIAL SYSTEM

Even though the judiciary has improved somewhat recently much more needs to be done. The inability of the court to adjudicate case timely has led to mistrust and lack confidence in the court system. In a weak judicial system, property rights and the rights of individuals as well as information may not be vigorously protected. This gives room for manipulation and unreliability of information.

2.5.3 SUPREMACY AND DISAGREEMENT.

There are constant turf battles amongst law enforcements, intelligence and security agencies. These disagreements brings disharmony in intelligence gathering on economic and cyber-crime. Forensic accounting may not be an exception.

2.5.4 INADEQUATE CYBERSECURITY FRAMEWORK.

There is lack of adequate cyber security framework on the part of our law makers which portend serious dangers, economic loss and national security vulnerability.

2.5.5 LACK OF ADEQUATE INFRASTRUCTURE.

Nigeria currently has a weak infrastructural and knowledge base. The telecommunication system or telephone is not secure as a result of reliance on wireless telephone. The internet and research development are still at the developmental stage. These weak infrastructural and knowledge base makes the work of the forensic accountant difficult.

2.6 STRUCTURAL ISSUES IN REGULATION.

A first consideration in structuring the government entity that will have responsibility for regulation in combating corruption is whether these functions should be the purview of one integrated agency or separate ones. In this regard, recent experience in Nigeria is enlightening. Nigeria employed a very novel approach to regulation, relying only in general corruption case brought before the courts show that rapid technical issues, mundane infrastructures and lack of political will make it difficult to find a suspect guilty of corruption charge. Moreover, the procedures involved make for long delays. There are duplication of corruption agencies in Nigeria for instance the economic and financial crime commission and the independent and corrupt practice commission functions are similar, the difference is only in the name and time of promulgation. Integrating anti-corruption agency into a single agency is a step in the right direction. Of recent the federal executive council, FEC, has approved the merger of economic and financial crimes commission, EFCC, with independent corrupt practices and other relates offences commission (ICPC), to form one anti-corruption agency [Wednesday October 16, 2013]. The council took the decision in its meeting while considering the white paper prepared by the Stephen Oronsanye-led committee on the restructuring of federal government parastatals, commission and Agencies. Integrating regulatory agencies is an attracting option for Nigeria especially for combating corruption because it faces a significant short fall in adequate trained personnel in this direction. The agency should have specialist forensic accounting departments. Within these groups, there may be further sub-specialization; some may specialize in insurance claims, personal injury claims, and fraud, construction or royalty audits. Such an organization may help reduce the threat of technical inefficiency in prosecuting criminal cases as it is witnessed in the agencies present disposition although this may not insulate the agency from political interference in view of its strategic importance.

3.0 RESEARCH DESIGN

The population of this study consisted of experts at the operational and supervisory levels in the audit forensic accounting firms in Nigeria. The research target population consisted of 400 forensic accountants in the country.

3.1 SAMPLING PROCEDURE AND SAMPLE SIZE

An accessible sample size of 200 (two hundred) forensic experts was arrived at after the calculation. Forensic accounting and Audit firms were randomly selected from the geo-political zones of south-south (Rivers and Delta states) respectively and south-west (Lagos and Oyo States respectively). They include Akintola Williams Deloitte and Touche, Price Water House Coopers (PWC), Success bridge Consulting ltd, Sunday Ojwu and Co chartered accountants, Ebbiwos Consulting limited, Ibrahim Jimoh and Co chartered accountants, Amazing Grace Consults, UMC chartered accountants, Anthony Nwine and Co chartered accountants, Gerald Uzomah and Co chartered accountants and also forensic accountants from the EFCC respectively.

Taro-Yamen sample size determination formula was applied to establish the sample size of respondents.

$$\text{Taro Yamene (n)} = N \frac{1}{1 + N(e)^2}$$

Where, N = Population Size

e = Level of significance

n = Sample size sought

$$n = \frac{400}{1 + 400(0.05)^2}$$

$$n = \frac{400}{1 + 400(0.0025)}$$

$$n = \frac{400}{2}$$

$$n = 200$$

3.2 OPERATIONAL MEASURES OF VARIABLES

Regulatory framework was operationalized by Nigerian evidence act 2011 and EFCC act while forensic accounting was measured using litigation support services and investigative accounting.

The questionnaire was measured on 5 point likert scale ranging from strongly agree (5) to strongly disagree (1).

3.3 DATA ANALYSIS TECHNIQUES

To achieve the objective of establishing the exact nature of the existing relationship between the variables through the generated primary data and to empirically evaluate the effectiveness of the regulatory framework on forensic accounting in Nigeria, the Pearson product correlation method (PPMC) through the application of the Statistical package for social sciences (SPSS) IBM version 18.0 was used in analyzing the questionnaire generated data.

3.4 MODEL SPECIFICATION

The following models were specified in accordance with the objectives and formulated hypotheses in other to guide the study.

$$1. \quad LS_i = f(EV, EF) \dots\dots\dots 1a$$

Rewriting equation 1a explicitly;

$$LS_i = \mu_0 + \mu_1 EV + \mu_3 EF + U_1 \dots\dots 1b$$

$$2. \quad IA_i = f(EV, EF) \dots\dots\dots 2a$$

Rewriting equation 1a explicitly;

$$IA_i = \beta_0 + \beta_1 EV + \beta_{2RF} EF + U_1 \dots\dots\dots 2b$$

Where:

LS_i = Litigation support services

IA_i = Investigative Accounting

EV = Evidence Act

EF = EFCC Act

μ_0, β_0, α = Intercept

$\mu_1 - \mu_2, \beta_1 - \beta_2$ = Regression Coefficient

$U_1 - U_3$ = Stochastic Term

a'priori Expectation

$$\mu_1 > 1, \mu_2 > 1$$

$$\beta_1 > 1, \beta_{\mu_2} > 1$$

4. RESULTS

4.1 SURVEY RESULTS

4.1.1 REGRESION.

Regression was run separately for each of the hypothesis on tables 1- 4. Table 1 revealed $r = 0.966$, $p = 0.000$ Table2 also indicated that $r = 0.962$, $p = 0.000$ Table 3 indicate $r = 0.985$, $p = 0.000$, Table 4, has $r = 0.983$ $p = 0.000$.

All of the hypotheses show strong and positive relationship between the dependent and independent variables.

5.0 DISCUSION AND CONCLUSION

This study examines regulatory framework and its relationship with forensic accounting practice in Nigeria. The result pertaining to hypothesis one on Table 1 shows that there is a strong and significant relationship between evidence act and litigation support services. The Nigeria evidence act 2011 deals basically with the procedures to follow in the course of prosecution, and how to tender evidence. Forensic Accountant according to Lourie (1953) should not have to attend law school to learn the art of expert testimony. The evidence act as amended has taken cognizance of the earlier lapses which in part has incorporated the role of forensic accountants. Part of Accountant litigation support services include E - discovery processing and early case assessment. The evidence act is so fundamental to the forensic accountant to make his proof of evidence admissible in the court of law especially when standing as an expert witness. Hypothesis two on Table 2 revealed that there is a significant relationship between evidence act and investigative accounting. This is in conformity with our expectation. An investigative accountant's major role is to collect evidence so as to bring clarity and comprehension on issues under investigation. The evidence act is necessary and crucial to the effective functioning of forensic accountant in Nigeria. The arraignment of Femi FemiKoyede over corrupt charges by the economic and financial crime commission at the federal High court brought to the fore the lacuna inherent in the evidence act in investigating and prosecuting terrible economic crimes against Nigerians. In the case, the judge had regrettably opined that computer printout of various bank account statements of the accused persons as presented by the EFCC legal team though relevant, but are inadmissible because there is no provision in the Act that permits their admissibility. Weighty and Overwhelming as they poised, such materials were inadmissible (www.thenigerianvoice.com). However, the amended Evidence Act 2011 S.84(1) makes Statements in documents produced by computers admissible. This findings is in tandem with Thornhill W (1995) who opined that a forensic accountant's financial skills and investigative mentality be conducted within the context of the rules of evidence. Hypothesis three on table 3 shows, "there is a significant and positive relationship between EFCC Act and litigation support service. The EFCC Act seems very laudable and forceful in combating financial crimes in Nigeria. The commission's ten commandment which include (1) Integrity, (2) Commitment, (3) Efficiency (4) Professionalism (5) Discipline, (6) Patriotism, (7) Focus, (8) Accountability, (9) Courage (10) Loyalty are synonymous with the ethical code of the Accounting profession. This finding is in conformity with Asaolu (2009) which states that forensic accountants provide litigation support service which is the provision of assistance of an accounting nature in a manner involving existing

or pending litigation in areas of quantification of economic crimes. The commission needs forensic accountants to thrive. The forensic accountant can function effectively with appropriate Agencies and enabling regulations. Recently, forensic accountants have started to develop expertise in tracking laundered money. With the connectivity between EFCC and the Interpol, the forensic accountants in Nigeria can develop expertise in tracking laundered money. They may be involved in recovering proceedings concerning actual or assumed proceeds of crime or money laundering. Hypothesis four revealed a positive and significant relationship exists between EFCC act and investigative accounting (Table 4). This is not surprising. One of the major functions of the EFCC is to investigate all financial crimes such as advance fee fraud, money laundering et cetera. The forensic accountants utilize an understanding of business information, financial reporting systems, accounting and auditing standards and procedures, evidence gathering and investigative techniques, and litigation processes and procedures to perform their work. By the provision of section 14 of EFCC act, the forensic accountant or investigative auditors have to give expert evidence at the eventual trial of a suspected fraudster.

In conclusion, regulatory institutions must be particularly strengthened in Nigeria so as to provide long run incentives through their proper commitment to the forensic accountants, since the major goal is to combat financial crime and to attract foreign direct investment. The National assembly should approve and pass unto law, the bill to establish an Institute of forensic accountants of Nigeria [IFAN]. The regulatory measures/ bodies instituted should be regularly assessed and evaluated after implementation and make adjustments to improve them as of when necessary in the light of experience so as to foster growth in the forensic accounting profession. Government should invest funds in the regulatory agency provide infrastructures and modern equipment to enable them meet the challenges of fighting complex financial crime in Nigeria.

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Table 1

Correlations		EVIDENCE ACT	LITIGATION SUPPORT SERVICE
EVIDENCE ACT	Pearson Correlation	1	.966**
	Sig. (2-tailed)		.000
	N	182	182
LITIGATION SUPPORT SERVICE	Pearson Correlation	.966**	1
	Sig. (2-tailed)	.000	
	N	182	182

** . Correlation is significant at the 0.01 level (2-tailed).

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Table 2

Correlations		EVIDENCE ACT	INVESTIGATIVE ACCOUNTING
EVIDENCE ACT	Pearson Correlation	1	.962**
	Sig. (2-tailed)		.000
	N	182	182
INVESTIGATIVE ACCOUNTING	Pearson Correlation	.962**	1
	Sig. (2-tailed)	.000	
	N	182	182

** . Correlation is significant at the 0.01 level (2-tailed).

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Table 3

Correlations		EFCC ACT	LITIGATION SUPPORT SERVICE
EFCC ACT	Pearson Correlation	1	.985**
	Sig. (2-tailed)		.000
	N	182	182
LITIGATION SUPPORT SERVICE	Pearson Correlation	.985**	1
	Sig. (2-tailed)	.000	
	N	182	182

** . Correlation is significant at the 0.01 level (2-tailed).

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479 **Table 4**

Correlations		EFCC ACT	INVESTIGATIVE ACCOUNTING
EFCC ACT	Pearson Correlation	1	.983**
	Sig. (2-tailed)		.000
	N	182	182
INVESTIGATIVE ACCOUNTING	Pearson Correlation	.983	1
	Sig. (2-tailed)	.000	
	N	182	182

** . Correlation is significant at the 0.01 level (2-tailed).

480 **Table 5**

481 **RELIABILITYTEST** Item-total statistics

	Scale mean if item deleted	Scale variance if item deleted	Corrected item-total correlation	Cronbach's alpha if item deleted
EVIDENCE ACT	63.08	460.303	.973	.916
ICPC ACT	62.62	464.933	.976	.918
EFCC ACT	61.63	477.328	.984	.922
LITIGATION SUPPORT SERVICE	44.49	236.207	.992	.985
INVESTIGATIVE ACCOUNTING	58.13	417.585	.990	.900

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483 **Reliability statistics**

Cronbach's alpha	N of item
.937	5

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