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PREVENTING CORPORATE FAILURE THROUGH FORENSIC AUDIT AND INVESTIGATION: THE ISSUE OF INTENT

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Abstract

This study examined the role of Forensic Audit in Preventing Corporate Failure. To achieve this, attention was given to the issue of intent and determination of evidence and guilt of intent through forensic audit and investigative techniques. An aggressive literature review is conducted to establish the relevance of forensic investigation in establishing men rea in financial fraud as the best way of proactively preventing corporate failures occasioned by fraud and in appropriate corporate governance behaviours. It is confirmed that conventional audit does not have the mandate and training to detect fraudulent intents, but forensic audit does. It was therefore recommended that management should adopt an accounting system that is sound in principle and effective in proactive practice of fraud management. Also, forensic accounting/auditing services should be utilized holistically while management needs to be proactive by objectively initiating forensic investigations on quarterly basis.
KEY WORDS Forensic, Audit, Corporate failure, Intent, criminal, Nigeria

Introduction

Corporate accounting scandals and the resultant out cry for transparency and honesty in reporting has given rise to a practice aimed at enhancing corporate financial performance. However, the primary goal of corporate governance is to enhance the value of an entity via ethical behavior, espousing a policy of openness, fairness and ensuring informed decision making throughout the organization. The attainment of ethical corporate performance as envisioned may certainly be an illusion under conditions of poor corporate governance, flawed with poor internal control system and fraudulent financial reporting. Agreeably, financial irregularity is an issue of global concern because of the endemic nature of fraud and corruption, which arc gradually becoming normal ways of life in whatever situation one finds himself regrettably, individuals perpetrate fraud and corrupt practices with impurity according to the capacity of their offices. Financial irregularities affect both private and public sectors but the magnitude of public office fraud coupled with the extent to which service delivery and citizens' welfare are affected call for alarm. Masum (2008) noted that no money is entirely free, every naira and kobo has its legal use and consequently the misuse of any amount will impact negatively on where it should legally be used. This is a clear indication that mismanagement of public resources affects an entity either directly or indirectly in terms of service delivery and infrastructural development.

Traditionally, an auditor's responsibility is to express opinion on whether financial statements are presented (according to Generally Accepted Accounting Principles (GAAP).

However, contrary to the expectations of the public, the auditor does not have an absolute duty to uncover fraud. Ramaswamy (2005) posited that SAS 99 prescribes steps for auditors to take in order to ensure that they have planned and implemented their audits in a way that responsibly addresses fraud consideration. The accountant's work in the contrary serves the public interest while the auditor's certification is of special significance since it lends credence to financial statements as veritable tools for variety of decisions by interested users.

It is envisaged that a good and effective internal control system provided by the internal audit unit of an entity is capable of enhancing the objectives of profitability, minimization of loss of resources and guaranteeing, absolute assurance and reliability of financial reporting. However, the spate of corporate failures occasioned by abuse of corporate power, dubious accounting practices, flawed internal control systems and failure of statutory audit to prevent and reduce the incidence of fraud has seriously created a lacuna between accounting duties and statutory audit. The scenario of the public sector is such that ethics, which define the conduct of professional bodies such as the Institute of Chartered Accountants of Nigeria (ICAN) and Nigerian Institute of Management (NIM), are applied with levity. This amounts to breach of professional conduct and public trust. Ramaswany (2005) posited that a breach of any of the fundamental ethical principles of competence, objectivity, independence and integrity therefore has far-reaching consequences. This will further corrupt and pollute the accounting figures that they become of doubtful value.

It is unfortunate that fraud and corruption have seemingly become common features of corporate organizations in Nigeria. The pervasive mismanagement of resources at the expense of qualitative and effective service delivery is critical to corporate and accounting failure. Financial crime has become really pervasive and the likc1ihood of corporate fraud occurring has become more severe. High level financial abuse had hindered tax collection, making enforcement of law difficult and discouraging foreign investment. It has become imperative for professional accountants to be grounded in the techniques of identifying, discovering proactively and postmortemly and preserving the evidence in all forms (Okolo 2007; Uche 2009).

Considering the reality of corporate failures, it behooves all accountants and corporate managements to step away from the traditional approach that emphasized compliance with Generally Accepted Accounting principles (GAAP) and focus on a forensic investigation of the traits underlying corporate accounting, behaviour and management (Oyadonghan and Ogoun 2018). This is aimed at guaranteeing transparency and honesty in corporate reporting. Management of corporate entities does not only commit financial misappropriation but in a sophisticated form, which is often attributed to complex challenges and risks that are difficult to tackle. These corporate threats are further aggravated by globalization and the advent of modern information technology, which have advanced the pace of electronically manipulated fraud and corporate financial mismanagement as the case with Diamond bank in Nigeria.

To match the capacity of financial irregularity, sophisticated accounting/auditing techniques are necessary to detect, trace and resolve fraud especially when the results may impact negatively on the financial statements. This further demands that accountants should be proactive by equipping themselves with the necessary skills aimed at identifying and acting on indicators of poor corporate governance, such as mismanagement, fraud and other wrongdoings. This scenario therefore, calls for the application of forensic accounting/auditing, which is a specialty that has developed ways of tackling corporate challenges.

Forensic auditing is the application of auditing skills to situations that have legal consequences; it is the application of accounting, auditing and investigative techniques in order to' come up with sufficient evidence that can be used in court proceedings. It is used in situations where solutions to business and financial matters could result in some kind of legal proceedings. Forensic audit is highly a technical and specialized area of practice that integrates accounting; auditing and investigative skills to provide information that are meant to be used as evidence especially for legal purposes (Macleod and Melinda 2012; Albrecht and Albrecht 2001).

The rate of banking reforms formulated and implemented in the last decade, which includes recapitalization, establishment of bank deposit insurance commission, statutory deposit and many more should guarantee a financially viable and strong banking system in Nigeria. Any economy with a floppy banking system will continue to suffer from economic instability cost. Therefore a coercive and aggressive major is the right direction to solving this national financial degases of the Nigerian oil wealth.

The global search for a solution to the audit expectation gap problem has become strident due to the failure of statutory audit to detect and prevent the incidence of sharp financial malpractices (Appah and Oyadonghan 2011). The credibility of the accounting/auditing profession is seemingly at its lowest ebb and has become a topic of public discourse. Apparently a connecting link between corporate governance and accounting practices appears lacking particularly on the efficiency of internal control system (Ogiriki and Oyadonghan 2017).

The spate of corporate failures occasioned by abuse of corporate power, dubious accounting practice flawed with weak internal control systems, fraudulent financial statements and mismanagement of public resources. This scenario is not only unfortunate but is of general concern as quality service delivery and infrastructural development of an entity becomes illusive. It is worrisome that the misstatement of public resources with impunity is not only at the expense of welfare and social responsibility to stakeholders but a systemic cankerworm. This study therefore examined the effects of forensic audit on the financial practices and failure of corporate institutions.

Literature Review

Forensic Audit and Accounting

It should be noted from the onset that one cannot disconnect forensic auditing from forensic accounting due to, the growing needs of corporate entities. Therefore forensic audit and forensic accounting are used interchangeably for the purpose of this study. There abound several views in an attempt to appropriately define forensic auditing/accounting.

It can be term as the application of financial skills and an investigative methodology to resolve issues contested within the context of rules of evidence, application of specialized knowledge and specific skill to stumble upon the evidence of economic information (Bor and Abaretin 2010). Forensic accounting is the integration of accounting, auditing and investigative skills to determine whether fraud has occurred or has the possibility to occur. This concept provides an accounting analysis that is suitable to the court, which will form the basis of discussion, debate and ultimately dispute resolution on the contest of occurrence or the intent of letting it to occur. Most scholars have avoided this intent of letting it to occur as a function of forensic audit.

Coenen (2005) posited that forensic auditing involves the application of accounting concepts and techniques to legal problems. Legal problems are not only limited to what has occurred but also in the context of the intent of letting it to occur if there is supporting relevant, sufficient and reliable evidence (Otuturu 2005). Intent is a motive in law, especially in criminal law. It questions a mental disposition that motivates an action or provides the reason for an action. Intent is difficult to establish in a law court except by physical evidence. If the evidence could be established, then it becomes a liability for crime (*MENS REA* PRINCIPLE) in chapter 5(24) part 1 of the criminal code act chapter 77 of the Laws of the Federal republic of Nigeria. And chapter 53 of part 8 declares attempts, incitements and the preparation to commit offence as criminal; the expression ***mens rea*** means the narrow and the broad. These two concepts relate to the mental element that motivated the crime and the evidence of the crime.

This doctrine will help to decipher a guilty mind prior to conviction, or determine at what point an accused can be blamed or can start to be blamed for a crime or to calibrate the level of blame worthiness or culpability of an action. To establish the liability of suspected calculated criminality requires an evidence of causation (a guilty mind). One basic axiom of this doctrine is that an act cannot be guilty until the mind is guilty. Every evil or good act is conceived in the mind, calculated and strategized before execution. This liability demands that a person intend to do something that might reasonably be expected to cause a harm of particular offence charged, except on the rule of logical relevance (proof of mistake). Except the act of financial misconduct and fraud are mistake of logical relevance, otherwise, all financial crimes of fraud are culpable ***men rea*** provable by evidence.

This shows that the concept demands reporting where the accountability of the fraud is established and to be considered as evidence in the court of law or in the administrative proceedings of law. Therefore, forensic audit concept is the application of financial accounting and investigative skills to a standard accepted by the courts, to address issues in dispute in the context of civil and criminal litigation. It is the application of criminalities methods and integration of the accounting, investigative activities and law procedures to detect and investigate financial crime (Damilola and Olofinsola 2007). The big question is, can forensic investigative techniques be appropriate to establish evidence of intent for criminal proceedings in court of jurisprudence?

Objectives of Forensic Audit

The objective of forensic audit is categorized into three:

1. Determining whether fraud has actually occurred.
2. Determining and naming person(s) involved in such fraud with a view to instituting legal action.
3. Examining voluminous and in totality records .and entries as required by law. Proper documentation of fraud related issues by proving the loss, responsibility for the loss and other beneficiaries.

Accounting is a profession which practice is guided by rules, standards, principles, guidelines and legal frameworks. These standards and rules are religiously guided and followed to prevent deviation. A deviation is considered to be a violation of compliance and consistency. A noncompliance with these standards is an unethical act and punishable by relevant professional bodies and attracts litigation. An examination of voluminous records of account by trained auditors is capable of revealing any deliberate act of noncompliance and inconsistency with accounting standards. It is strongly believed as a rule that fraud can be prevented with a dogmatic rule of compliance with accounting standards. Therefore, intent to commit a financial crime starts with an act of non compliance with minor accounting standards and regulations of financial guidelines.

The primary role of an internal audit unit of any organization is to ensure compliance with internal control system and guidelines, which are professionally designed to prevent and detect the intent for committing fraud through pre-payment audit. The ridiculous occurrence of non-compliance by accounting and management professionals on a continuous basis is a show of **intent** considering the level of professional negligence involved in the act. The magnitude of professional negligence can be measured on the basis of training, competence and experience on the job.

Given the degree of training and exposure to crime records by forensic investigators, the ability to detect this form of **intent** in financial crime can easily be established. With the training for litigation proceedings, the intent can be presented as an evidence of ***mens rea*** for proper prosecution in a competent court of jurisdiction.

Reasons for Forensic Audit

The call for forensic audit in corporate organizations appear inevitable may arouse due to failure of the audit system to figure certain errors in the management system. The prevailing working environment of service-oriented entities where internal control system is treated with levity creates room for corrupt and fraudulent tendencies. Such scenario calls for forensic audit as to ameliorate the situation. Eze (2015) identified the following reasons for the growth of forensic audit.

1. Internal audit and audit committee as a point of management function could not throw light on different facts and other hidden aspects of corporate fraud.
2. Rotation and method of appointing statutory auditors are not foolproof as it brooks collusion and lobbying.
3. The certificates of the auditors are hardly scrutinized carefully especially when the reports are unclean and qualified.
4. The internal auditors can surely detect what was happening but they are hardly in a position to initiate proper action at the proper time.

In the light of the above, it is obvious that the internal control system is defective while the internal and statutory audit systems also failed in their bid to uncover hidden corporate fraudulent **tendencies**. Tendencies are considered to be evidences of intent.

The increasing use of auditing skills to prevent fraud by identifying and rectifying situations that could lead to fraud being perpetrated makes forensic audit inevitable. This is altruism since forensic audit investigates fraud or **presumptive** fraud with a view to gathering evidence that could be tendered in a court of law. It is therefore necessary to discuss forensic auditing as either reactive or proactive.

- Reactive Forensic Auditing: This is aimed at investigating cases of suspected fraud in order to prove or disprove the suspicions and if the suspicions are proved, to identify the persons involved, support the findings by evidence, which is to be presented in an acceptable format in any subsequent disciplinary or criminal proceedings. This type of investigation could be called an investigation of intent.

- Proactive Forensic Auditing: This is viewed from different aspects depending on its application as discussed below:
- Regulatory Compliance: This entails that Government Departments, Parastatals /Agencies use the technique of forensic auditing to, assess compliance with regulations governing payment of grants, contracts, recurrent expenditures and subsidies. Performance auditors could also use this technique while auditing public sector programs.
- Diagnostic Tool: Forensic audit can be used as a diagnostic tool by management or auditors to carry out general review of activities to highlight risks arising either from fraud or any other source with the aim of initiating focused review of particular areas constituting threats to an entity. Suffice it to say that proactive forensic audit is a tactical approach that aggressively targets types of frauds, searches for their indicators, symptoms or red flags (Oyadonghan and Ogiriki 2018).

Application of Forensic Audit

The fact that forensic auditing is a panacea to surmounting critical corporate problems that could led to corporate failures is indisputable. What matters is the human mindset, which is a critical factor for successful forensic engagement. However, it is important to note that the application of forensic audit techniques is predicated on certain steps or approaches. To this end, Zysman (2015) and Mbama (2012) outlined the following steps in executing forensic accounting / auditing engagements:-

1. Meet with the client to obtain an understanding of the important facts, key players and issues at hand.
2. Performs conflict checks as soon as the relevant parties are established.
3. Perform an initial investigation to allow subsequent planning to be based upon a more complete understanding of the issues.
4. Develop an action plan that take into account the knowledge gained by meeting with the client and carrying out the initial investigation and which will set out the objectives to be achieved and the methodology to be used to accomplish them.
5. Discuss expectations.
6. Discuss fees and reimbursement costs.
7. Obtain the relevant evidence after meeting with key individuals. This may involve locating documents, economic information, and assets, (a person or company, another expert or proof of the occurrence of an event).
8. Conduct a research.
9. Discuss with key individuals on information obtained after the research.
10. Make any necessary adjustment to the facts if any after the discussion with the individuals.
11. Perform an analysis, which involves calculating economic damages, summarizing a large number of transactions, performing a tracing of assets, performing a regression or sensitivity analysis, present value calculations using appropriate discount rates, charts/graphs to explain the analysis using a computerized application /spread sheet, database or computer model.
12. Write or prepare a formal report supported by evidence.

This includes sections on the nature of the assignment, scope of the investigation, approach used, limitation of scope and findings. It should also include schedules and graphics necessary to properly support the report. Furtherance to the above, the Canada

Institute of Chartered Accountants as cited by Zysman (2005) recommended the communication of work in forms of:
Written, oral or visual
Draft, interim or final
Point form or narrative
Formal, affidavit or letter

Forensic Audit as Antidote to Corporate Failure

Forensic auditing is an emerging branch in accounting/auditing which has the sole aim of unearthing fraudulent activities within and outside an organization so far as the third party's action is in anyway reflective on the activities of that entity. Forensic auditors are not only financial detectives but independent experts employed by management to uncover fraudulent financial reporting and misappropriated assets. The accounting, auditing, legal and investigative skills associated with forensic auditors place them at an advantaged position and therefore serve as antidotes to corporate failures. In the light of the strategic nature of forensic audit in an organization, Ramaswamy (2005) identified the following areas for a forensic auditor to make an impact to salvage the trend of corporate failures:

- Corporate Governance: A Forensic Auditor is distinctively positioned to explore the design of corporate government system with strong background knowledge of accounting, auditing, legal and investigative skills. Forensic auditors can help formulate and establish comprehensive governance policy that ensure an appropriate mix of management and independent directors on the board, with appropriate duties and fair allocation of powers as well as a corporate code of ethics for management and employees. Ethical behavior is reinforced when top management shows via its action that questionable behavior will not be tolerated.
- Preventing Fraud: Forensic accountants/ Auditors understand that the best way to prevent fraud is to establish an efficient control system that encompasses: a good control environment determined by management's philosophy of ethical behavior and corporate governance policies, a superior, accounting system that ensures proper recording, classification and reporting of all relevant transactions, and strong procedural controls that provide for safeguarding of assets, proper authorization, audit mechanism and proper documentation.
- Creating a positive work environment: It is a fact that fraud prevention strategies demand a positive work environment where highly motivated staff is not tempted to abuse responsibilities. It behooves on forensic auditors to ensure that governance polices are formulated to avoid high-risk environment where management is apathetic, pay inadequate or too high attention, lack of proper training and compliance or there are unreasonable profit and budget goals. It is expedient to have well defined hiring policies that will guarantee well qualified and honest employees.
- Establishing effective lines of communication: This is necessary in ensuring that the employees and other stakeholders in an entity are conscious of their rights and responsibilities. Effective communication must flow not just from the top to lower levels, but also across the employees on lines responsibilities. Forensic auditors must play a critical role ensuring that the desired information about governance as

required by ethics and policies are disseminated to interested parties within and outside the organization. Also, adequate reporting is necessary in order to meet the compliance requirements of the Securities and Exchange Commission and government.

- Vigilant oversight: A system needs to be constantly monitored and evaluated to ensure that it is functioning well. A forensic auditor monitors not only compliance at the top levels of corporate power, but also management procedures and employees' activities. Information obtained as a result of the monitoring can be used to readjust and reformulate governance, ethics and control policies.
- Establishing Consequences: It is important to note that fraud deterrence without an expectation of punishment amounts to efforts in futility (which is associated with conventional audit functions). Forensic auditors can help increasing policies that clearly state an entity's intent to take action against any criminal activities, which should be applicable to all levels of staff.
- Fraud investigation: The integrity of financial statements can be enhanced by forensic audit via investigation of fraud, identification of risk areas, associated fraud symptoms pursuing every anomaly aggressively and delving into minutest details of accounting and financial anomalies.

From the foregoing, it is clear that forensic auditors with the necessary accounting, auditing, legal and investigative skills is capable of enhancing and coordinating corporate efforts to achieve a cohesive policy of ethical behavior in an organization. It also serves as a definite link between accounting failures and poor corporate governance. An entity can rely on these skills to develop a consistent system of corporate governance, disseminating such information within and outside the organization, ensuring that governance policies and objectives are interwoven into the internal control system, setting up fraud prevention system and investigating any existing fraud. Therefore, a forensic accountant/auditor can easily evolve into key component functions in the corporate governance system by dints of his potentials in helping corporate entities to prevent and detect fraud.

Forensic Audit Techniques for Prevention of Corporate Failures as discussed by (Eze 2015)

1. Forensic auditing uses the techniques of ratio analysis which provides hidden information about the health of a firm before its death. This technique will reveal hidden financial information capable of telling the solvency, efficiency, profitability, liquidity and other leverage position of a firm. This advance information can be used and is used in motivating proactive actions towards corporate failure prevention. In normal circumstances, management accountants not auditors performance this role. In the case of management motivated fraud, the results of this analysis could be doctored. But if a body of forensic auditors is hired for this job the results will be put to good use in saving corporate failures in Nigeria if it is done on a regular basis.
2. The Benford's law technique will reveal beforehand whether a particular act or error is a fraud or a mistake. This technique will discover the point to calibrate culpability of an act of fraud by helping to identify the intent of an act to commit

fraud in an organization. With a Z test parametric statistics of less than 50% is an indication of intent to commit fraud or above 50% as an indication of non deviation from standards. A value of 65% and above is a strong indication of fraud free financial records.

3. Data mining is another forensic audit technique which mine large volumes of data with the help of computer networks to reveal or provide information on new or, hidden patterns of data movement in an organization so as to detect a change in the pattern of information, processing, approval a, d levels of authority and accountability. This technique uses predictive modeling to discover deviations from known patterns and link analysis for predictive interpretations on possible financial threats.
4. The theory of relative size factor is another technique used in forensic audit and investigation. It identifies all unusual fluctuations and changes in transactions with the aim of identifying or tries to identify them as fraud driven or mistake driven with predetermined axioms of the transaction patterns in line with the internal control policies of an organization. It helps to identify deviations from internal control policies and provides indicators on areas that require an intensive substantive test by the auditor.

The application of these techniques on a regular basis not minding whether fraud has been committed is a viable means of preventing fraud related causes of corporate failures in Nigeria. Bearing in mind that one key characteristics a forensic auditor are having a mindset foreseeing fraud in all financial transactions whether caught, suspected or discovered or intent to commit.

Conclusion and Recommendations

The foregoing had given sufficient reason to show that forensic audit and investigation is a tool to be used in fighting fraud in advance because it has the required skill, technique, and professional/legal training to gather, analyze, document and present fraudulent evidence for litigation. The early detection of intent is the best cause to fighting fraud and forensic audit and investigation also possess the tools to determine evidence on intent which is prosecutable as ***men rea*** because no fraud is committed without intent with a calculated route of escape as indicated in the fraud triangle and diamond.

To achieve this requires a policy shift in the process and rules of engagement of forensic auditors and fraud investigators. Shareholders in the annual general meeting and as a policy hire forensic auditors as statutory staff from the beginning of an accounting year to work hand in hand with the internal audit unit. The forensic auditor/accountant should only report and directly to a body other than the audit committee made up of only shareholders (to be nominated by the shareholders for a tenure of one financial year or two) of not more than five members responsible for the functions and duties of the forensic auditors and accountants. To hold their meetings on a quarterly basis except on the grounds of an emergency as informed by the forensic accountants or noticed in their reports to the committee. The committee shall be named the forensic audit committee.

The Securities and Exchange Commission, the Financial Reporting Council of Nigeria, the Central Bank of Nigeria and the Nigerian Deposit Insurance Commission should give the legal strength to this committee.

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