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Review Article

The Legal Protection of Banking Industry in Cameroon: Prospects for Effective Implementation

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Abstract

The era of globalization has tremendously affected the banking industry in Cameroon. In this light, this paper after making clarifications of key concepts, seeks to appraise the legal provisions and mechanisms currently governing the banking industry in Cameroon, with particular focus on the regulatory parameters of the banking industry. As a result, the paper recommends salient measures in order to blend theory and practice for effective implementation in the banking industry in Cameroon.

Keywords: Legal, Protection, Implementation, Bank, Industry, Cameroon.

INTRODUCTION

Cameroon today is a member State of the Bank of Central African States (B.E.A.C.) and also a member of the Central African Economic and Monetary Community (CEMAC). These two bodies, BEAC and CEMAC constitute part of the "Franc Zone". It should be recalled that Franc Zone simply means those African States whose monetary policy is being directed by France especially in the domain of exchange rate with respect to currencies of other countries, convertibility to other currencies, centralization of international exchange reserves and harmonization of regulations.

Interesting to note is that, the banking industry in Cameroon is governed by a series of enactments (conventions, laws, ordinances, Presidential Decrees, Ministerial orders and circulars). Cameroon along with five other countries of the Central African Sub-Region have one Central Bank, the Bank of Central African States which is better known by its French acronym "BEAC" [[1]].

One of the most important texts regulating the banking sector in Cameroon is Ordinance Number 85/002 of 31st August 1985 which was further ratified by Law Number 88/006 of July 1988 and Law Number 10/019 of August 10th 1990 relating to the establishment of credit institutions or loan houses in Cameroon. The main banking regulatory instrument is the COBAC Text of 17thJanuary 1992 harmonizing banking regulations in the six member States of BEAC.

Unlike the old practice whereby only persons of Cameroonian nationality had the privilege to lead banking institutions in Cameroon, investment in the banking sector is now opened to all persons or corporate bodies of Cameroonian or foreign nationality, irrespective of their place of residence. Hence, foreign nationals have the right to enjoy the same liberties and protection of the law as those granted Cameroonian natural persons or corporate bodies. Furthermore, Ordinance No. 90/6 of October 26th 1990 exempts banking institutions from the payment of registration fees and stamp duties on all deeds and judgments relating to transfer and/or resale of immovable property.

The financial system in CEMAC is bank-dominated and mostly foreign-owned. Cameroon and Gabon, the two largest economic powers in the subregion, account for about three-fourths of total assets and loans. There are 33 deposit-taking banks in operation in CEMAC as of end-2005, 31 of which are

[1] The Republic of Cameroon, Chad, Central African Republic, Gabon, Congo and Equatorial Guinea are the member States of BEAC.

privately owned, and 23 of which are foreignowned by entities outside CEMAC.

Banks in Cameroon, both domestic- and foreign owned have been found to offer loans only to a few high net worth individuals and corporate, with a narrow range of product offering. This state of affairs has leaved most Cameroonian without any contact with the financial world. Even though one can point fingers to banks for offering limited credit to ordinary Cameroon despite having excess liquidity on their balance sheet, the high number of non-performing loans and difficulties in recovering loans through the courts are major difficulties face by banks in this country. Cameroon's financial system is not fully developed, and the absence of a vibrant credit market has been found to hinder more dynamic economic growth. Most analysts see growth opportunities in offering financial services to the 'unbanked' and tapping the potential of the vast informal sector, which comprises approximately 45% of the economy [[2]].

Ownership of Banks in Cameroon

In 2007, ownership of banks in Cameroon was as follows; Cameroon government 9.8%, Cameroon nationals 33.3% and foreign nationals 56.9%. The recent entry of banks such as Oceanic Bank and the buying of majority stake by a Moroccan banking group in SCB-CL and Atlantic bank in Amity bank have tilted things in the favour of foreign nationals. This state of affairs could be blame on the Douala Stock Exchange which since inaugurated in 2003 has failed to mobilize funds from the Cameroonian public to the favour of foreign investor with huge capital to buy big stakes into the country's banks.

Whether this ownership pattern is healthy for the country or not is an argument for another paper, what is clear however is that the country's economy is squarely being place at the mercy of foreigners whose prime interest is to repatriate as much profits out of the country as they can.

This also exposes that country to external shocks, as investor may at any time move their funds to correct imbalances in their domestic economies. This notwithstanding, the foreign-owned banks have been found to add stability to the local banking sector by being better capitalized and more regulatory compliant than their domestic-owned counterparts who are more vulnerable to credit risk and less regulatory compliant. Their profitability and solvency are under pressure due to decreasing interest margins [[3]].

[2]See Common Wealth, 2009.
[3] See IMF, 2009

UNDERSTANDING KEY CONCEPTS IN THE BANKING SECTOR

This head provide a conceptual clarification of key terms.

Definition of a bank/banker as per the different laws

The word "bank" is said to be derived from the Italian word "Banco", meaning a bench. This is because the early Jewish bankers in Lombardy transacted their business at benches in the market place. When the banker failed at the time, his Banco was broken hence the appellation "bankrupt". There is no established definition of a bank. However some definitions have been provided.

The Halbury's Law of England defines a banker as "an individual, partnership or corporation whose sole or predominating business is banking. That is, the receipt of money on current or deposit account and the payment of cheques drawn by and the collection of cheques paid in by the customer".

The Cameroonian legislator defined a bank as "*an establishment whose activity is to receive funds from the public in the form of deposit, with the view to carrying out discount and credit operation, investment and other financial transactions"* [[4]].

Meanwhile, Decree No 90/1469 of 9th Nov. 1990 relating to the definition of credit establishments on its part simply classifies financial establishments. The COBAC regulation R-2009/02 of 1st April 2009 equally classifies credit establishments. Article 3 of the Decree like article 1 of the COBAC regulation R-2009/02 stipulates that:

"Banks are institutions which can carry out all banking activities. It continues in article 4(1) that banking operations would comprise"

The reception of deposits from the public, the granting of credits as well as putting at the disposal of the customer means of payment or their management.

Article 4(2) of the decree and article 5 of the COBAC Regulation further enumerate additional operations which banking institutions can perform. These include:

- Exchange transactions
- Investment, subscription of shares, purchase, management, custody and sale of stocks and shares and other financial products.
- Advice and assistance related to matters of property management
- Advice and assistance in financial management and in the general manner, all the services designated to facilitate the creation and development of enterprises.

[4]Article 1 of the 1962 Decree.

The COBAC regulation equally categorises credit establishments into universal banks, specialised banks and financial establishments or financial companies. Furthermore, Universal banks are those which are authorised in a general manner to receive funds from the public. They have the right to carry out all the other banking functions as listed above [5].

To proceed, specialised Banks are those that are also authorised to receive funds from the public but they can be distinguished from universal banks by the restrictive character of their scope of activity [6].

Moreover, financial companies are those that can only receive short term funds from the public, generally not exceeding two years. They finance their activities with their own capital and loans from other credit establishments or non-legal means [7].

Also, Specialised Financial Institutions are institutions which can only receive short term funds from the public not exceeding two years. They assume a mission of public interest determined by the national authority. The modalities for financing their activities as well as any banking activity which they can carry are regulated by legislative and regulatory text [8].

They can carry out only the financial activities listed in their license. The important differences between a banker and a money lender are as follows:

1. The banker is a debtor, being a receiver of money from depositors without providing security and in turn lends this money with collateral. The bank is bound to make payment on demand, of the amount not exceeding the total of their bank balances to its customers whereas, a money lender on the other hand, provides its own funds through many means including borrowing from friends or even banks and lends always on the provision of tangible securities.
2. The bank is obliged to collect drafts on behalf of its customers and discounts promissory notes and bill of exchange as well. A money lender may not discount notes, and certainly is under no obligation to collect draft for its customers.

In sum, whereas the relationship of debtor and creditor exist between banker and customers, the reverse is the case with a money lender. The money lender is usually the creditor and his client always the debtor.The law protects paying and collecting banks when dealing with crossed cheques. The money lender is under no such protection when he handles negotiable instruments.

On the part of a customer, at one time, it was thought that a person became a customer of a bank only when banking services were habitually performed for him by the bank. The mere opining of an account by the bank in the customer’s name was considered inadequate. This view was questioned in Lacave& Co vs. Credit Lyonnais and was discarded in Ladbroke & Co vs. Todd. In Ladbroke case, a rogue who stole a cheque opened an account with an ostensible payee of the instrument. The cheque was cleared and the rogue withdrew the funds. As a defence to the drawer’s action, for the conversion of the instrument, the bank relied on Section 82 of the Bill of Exchange Act 1882. It was objected that Section 82 was inapplicable as the mere opening of the account did not make the rogue a customer. But another judge held that the rogue became a customer when the bank agreed to open the account.Today, it is evident that “a customer of a bank is one who opens an account with the bank”. It is immaterial that the account is overdrawn and it is irrelevant whether the account is of the current type or some other such as deposit and savings accounts.

CONTRACTUAL OBLIGATIONS/DUTIES OF BANKER TO CUSTOMER

Once the existence of an implied contract underlying the banker customer relationship became accepted, it also became clear that the ordinary rule governing debtor - creditor relationship do not apply entirely to the banker-customer relationship. For instance, the ordinary rule which requires a debtor to seek out his creditor and pay him cannot be applied to the banker even though he is a debtor to each customer. Additionally, in the period which has elapse since the epochal judgment, of the House of Lords in *Foley v. Hills* the judiciary had to pronounce on other problems concomitant with the banker-Customer relationship. In the light of these, the modern day position of the implied contractual obligations owed by banker to customer in the ordinary course of business requires a careful restatement along the following lines of duties.

Duty to receive cash and collect cheques for customers

The most fundamental obligation of the banker to his customer is that he impliedly undertakes to borrow for his customer any excess monies the latter choose to lend and to repay same or part thereof upon demand. As interpreted by the courts, the banker is duty bound to receive cash deposits, and to collect the proceeds of cheques and other negotiable instruments on behalf of the customers. It is today the law that bankers worldwide including Cameroon collect cheques for customers in order to credit their accounts with the proceeds. Thus in *Balogum v. National Bank of Nigeria*, the supreme court made it clear that the banker is responsible for the receipt on current or deposit accounts, and the payment and collection of cheques paid in by his customer.

[5]See Article 9 COBAC regulation R-2009/02.
[6]See Article 10 COBAC regulation R-2009/02.
[7]See Article 11 COBAC regulation R-2009/02.
[8] See article 12 COBAC regulation R-2009/02.

In the words of the courts:
"The role or predominating business of a banker is the business of banking which consists in the main in the receipt of monies on current account." This legal obligation is similarly reflected in the case of Ide Chemist v. National Bank of Nigeria [9] *where Okagbue, J held, inter alia, that: "One of the principal functions of the bank is to receive instruments including chequess from his customers in order to collect the proceeds and credit his customers account."*

Duty to honour customer's cheque

Following the requirements of demand as a condition precedent imposed on the customer, a reciprocal duty became imposed on the banker namely a duty to honour such a demand once made. The customers demand is always made in the form of a written order called "cheque". The banker, thus, is obliged both at contract and I duty to honour his customer's cheque. This obligation is however, subject to two main conditions. First the obligations to honour the customer's cheque is subject to the availability of funds in the customer's account. Second where the bank has granted the customer overdraft facility, then he is obliged to honourcheques drawn by the customer within limits of the agreed overdraft.

In *Balogun v. National bank of Nigeria* [10], the appellant drew a cheque on the client's account which cheque was dishonoured. At the time of the dishonor, the appellant had sufficient assets tomeet thecheque. In an action for damages arising out of the breach of contract, the Supreme Court held that:
It has long established that refusal by a banker to repay a customers cheque of when he holds in hand an amount, equivalent to that endorsed on the cheque belonging to the customer amounts to a breach of contract for which the bank is liable in damages.

Similarly in *Adeleke v. National bank of Nigeria* [11], the plaintiff who was at the material time an army officer was a customer of the defendant bank. He issued a cheque for ₦28 drawn on the defendant but which the bank by mistake sent to another branch where the plaintiff did not maintain an account. The cheque was returned unpaid, although the plaintiff had sufficient funds in his account at the branch at the branch on which the cheque was drawn. His superior officer was given notice of the dishonouredcheque. The plaintiff sued for breach of contract by the defendant for wrongful dishonor of his cheque. He also contended that the notice of dishonour constituted a Libel. The courts awarded damages in his favour against the bank for breach of contract in failing to honour the customers cheque eve when funds were available in his account.

Where however, the customer has funds in the account, but which amount is less than the sum written on the cheque, the banker will be well within his rights to dishonour the cheque, the banker would be well within his rights to dishonor the cheque. Thus in*Ademuluyi and Lamuye v. African Continental Bank* [12], the plaintiffs drew a cheque for £54,584 when they where rightly supposed to have only £49,000 to their credit. The defendant bank set up a defense of insufficiency of funds to the plaintiff´s suit for breach of contact following the bank´s dishonor of their cheque. Ademola J found that; ″the plaintiffs being customers of the defendants did not, as a fact, on January 25th 1964 have £54,584 belonging to them in the hand of the defendants. The defendants were, therefore, within their rights to have refused payment on the cheque drawn for that amount. On the bases of this finding, the court dismissed the plaintiffs´ claim and entered judgment for the bank.

The duty to honor customer´s cheque would not also be breached if the bank, though in funds, refuses to pay a result of a suit at law involving the account. Thus, in *Agwaramgbo v. Union Bank of Nigeria* [13], Ekpe, JCA, at the Court of Appeal Calabar held that the doctrine of lispendens availed of a banker who dishonored a customer´s cheque while action was pending in court, not withstanding that the account was in credit.

It may, however, so happen that the customer does not have sufficient funds in his account but has been granted overdraft facility by the bank. When such is the case, the bank must honor cheques drawn by the customer within limit of the overdraft so granted. Any unilateral withdrawal of the overdraft facility and dishonor of customer´s cheque will amount to a breach of contract for which the bank will be liable in damages. In *Oyewole v. Standard Bank of West Africa* [14], the plaintiff, a customer of the defendant bank, draw a cheque on the bank which was dishonored on its presentment the bank alleged that there was not enough morning in their account to meet the cheque. The bank had, however, agreed to grant the plaintiff overdraft facility. The plaintiff sued, and it was held that the defendant having failed to honor the plaintiff´s cheque breached their contractwith him.

In *Issa v. Union Bank of Nigeria* [15], the appellant alleged that the bank breached an agreement to grant him overdraft on his current account by

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9 (1976) NCLR 143 at 146
10 (1978) 3 SC 155 at 164.Also, Salami v. Savannah Bank (1990) 2NWLR (pt .130) 106 CA, Allied Bank v. Akoubuze (1997) 6 SCNJ 116 at 132 SCN.
11 (1978) 1 LRN 157 also, A.Uba v. UBN (1995) 1NWLR-(pt 405) 75.
12 (1969) 3ALR Com 10.
13 (2001) 4 NWLR (pt 702) 1 at 25-26.
14 (1968) All NLR 449
15 (1993) 4 NWLR (pt 288) 403 also NBN v. Fasoro (1977) 3 OYSHC (pt 1) 21

wrongfully ignoring the facility and dishonoring his two cheques after he placed reliance on enjoying the overdraft facility. The bank was held to be in breach of contractual obligation to its customer and ₦11,500 damages awarded against it by the trial court. On appeal Okunola, JCA, upheld the judgment of the lower court.

In *Rouse v. Bradford Banking Co Ltd* [[16]], Lord Herschell similarly considered it a breach of contractual duty for a banker who failed to honour customer´s cheque within limits of an agreed overdraft. All in all, therefore, it is now settled law that a banker has the duty to honour his customer´s cheque subject to availability of funds or within limits of an agreed overdraft.

Duty only according to customer´s mandate to pay

A banker is in contract and in duty bound to the customer´s mandate once found to be in order and there is no legal disability stopping him from obeying the mandate given. When a banker thus acts contrary to the mandate of his customer he will be acting in breach of his contractual obligation and at his own peril. An insufficient mandate on the other hand, commands no force and a banker cannot be held liable for treating an insufficient or improper mandate as mere brutumfullmen.

In *Union Bank v. Adediran* [[17]], the banker paid out money from funds belonging to the respondent's church account on the strength of an unauthorized signature and was held liable for paying without valid mandate. Similarly, in *Babalola v. Union Bank of Nigeria* [[18]], the plaintiff drew three cheques which the bank dishonored on the ground that the signatures they bore differed from the plaintiff´s specimen signature. Ayoola, J held that the bank was justified in refusing to pay pending further investigation as the case was one of disparity in mandate. In *Catlin v. Cyprus Cooperation London Ltd* [[19]], it was the view of the court that since a joint mandate given by both husband and wife was necessary for operating the account, payment made on the husband´s signature alone constitutes a payment made on insufficient mandate. Equity will, however, assist a banker who pays without a customer´s mandate but to discharge the customer´s debt. Such a payment will be considered valid.

Duty not to pay countermanded cheque

Just as a banker is obliged to pay only in accordance with a valid mandate, so is he also required not to pay out on a countermanded cheque. Section S. 75 of the Bills of Exchange Act is emphatic on this point. According to the section, the duty and authority of a banker to pay a cheque drawn on him by his customer are determined by:

a) Countermand of payment
b) Notice of the customer´s death.

Although a cheque may have been validly made out with all the necessary funds available, yet, an order from the customer to the banker not to pay must be obeyed. In order that such a counter mandate should be valid, it must be communicated to the banker in clear terms, and must also reach him before the cheque is presented for payment. A counter mandate issued, or given to a banker after he has paid the cheque is not valid, and a banker so paying shall not be liable to the customer.

In *Nwandu v. Barclays Bank DCO* [[20]], the plaintiff a resident of Lagos engaged the services of a builder to construct a house for him in Eastern Nigeria. He issued a post dated cheque for £600 in favour of the building company. On inspecting the work done, he felt quite dissatisfied, and therefore, decided to stop payments of the cheque issued by him in favour of the builders. The defendant bank was duly informed and asked not to pay the cheque on presentation. Notwithstanding this valid counterman, the defendant honoured the cheque. The plaintiff thereupon sued to his account re-credited with the amount paid out. In its defense the defendant bank sought to rely on the equitable doctrine under which he who has paid the debt of another is allowed to take advantage of his payment. The court rejected this defence and found the defendant negligent in paying out money against a countermanded cheque. Judgment was therefore entered for the plaintiff.

Duty to keep customer´s accurate

The need for a banker to keep his customers account accurate is aptly summarized by the role that where the customer acts, in good faith upon a wrong entry made in the stamen or pass book so altering his position, the banker is estopped from claiming to have the error adjusted thus, in *Holland v. Manchesterand Liverpool District Banking Co* [[21]] the defendant bank over-credited the customer´s account in error, having entered a credit for £10:12s twice in the pass book. The immediate effect of this, was, that instead of a proper credit balance of £60:5s:9d the customer was shown to have a balance of £70: 17s: 9d. Relying on this, the plaintiff customer issued a cheque for £67:11s in payment of a trade debt, which was dishonoured on presentation.

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[16] (1894) AC 586 at 596
[17](1987) 1 NWLR (pt 47) 52. Also in Imarsel Chemical Co.Ltd v. ACB Ltd (1976) 1 CCHCJ 33
[18] (1980) NCLR 201
[19] (1983) 1 All E.R. 809
[20](1962) All NLR 1147. See also NBN v. Savol (1994) 3 NWLR (pt 333), 435
[21](1909) 25 TLR 386. See also Skyring v. Greenwood and Cox 1825 4 B & C 281

Although the bank apologized, when the true circumstance became known, the customer nevertheless sued. The jury having assessed damages at £100, left it to the court to decide wether the plaintiff was entitled to draw the cheque in such circumstances. Lord Alverstone C.J. held that although the bank were entitle to have the wrong entry corrected, the plaintiff, not having been negligent or fraudulent, was entitle, until the adjustment was made, to act upon the bank´s statement in the passbook. Having so acted to his detriment, he was entitled to recover the amount in damages.

The courts have not found it easy in deciding whether or not the mere spending of money wrongly credited by a banker can be such detriment to the customer as will estoppe the banker from reclaiming it. In *Commercial Bank* of *Scotland v. Rhind* [22] a credit entry to the customer´s account was said to be no more than prima facie against the bank which the banker can establish to have been erroneous. Yet, the point has been made clear that it should not be supposed that the bank has any absolute right to adjust the error, irrespective of the customer´s bona fide actions upon the strength of it [23] indeed, in *Holt v. Markham* [24] where estoppel was one of the grounds of the decision against the bank, Scrutton, LJ, was of the view that it was a simple case of estoppel. The bank having represented to the customer (defendant) that he was entitled to a certain sum of money and paid it, and he having allowed sufficient time for any mistake to be rectified, became entitle to the act on that representation and thus, spent the money. It was in the circumstances a case to which the ordinary rules of estoppel applied. Mackenna, J in *United Overseas Bank v. Jiwani* [25], out lined three conditions which the defendant must satisfy if he is to successfully resist payment as follows: (a) that the bank had misrepresented the state of his account; (b) that he had been misled by the representation; and (c) that as a result ″he changed his position in a way which would make it inequitable to require him to repay the money″. The customer´s good faith is thus essential to his case. From which it necessarily follows that a customer who acts upon what he knows to be a wrong entry, and has not been misled, is himself estopped, and must pay the resulting overdraft. Thus, in *British and North European Bank Ltd v. Zalstein* [26] the defendant customer was barred from claiming a right to a book credit of £2000 with which the bank credited him in order to conceal his excess borrowing from the bank´s auditors, and later debited the account with the same amount. Neither entry was known to the customer until he received his pass book. Chorley and smart [27] are of the opinion ″that in normal circumstance of mistake as opposed to the unusual circumstance of the Zalste in case, it may well be difficult to prove that the customer knew the entry to be wrong ”.

Although a banker is under duty to keep his customer´s account accurate, the customer is under no corresponding duty to examine his pass book or statement to ensure accuracy. Lord Esher in 1891 in *Chatterton v. London and County Banking Co Ltd* [28] expressed the opinion that customers were not bound to examine their passbooks. The rule has been applied since then by English courts [29]. There is no direct Nigerian authority on the point, and it will be interesting to see what views are courts will take in any future dispute. In the United States, however, the principal seem to be that failure to examine and draw inferences from bank statements was negligence on which to found estoppel.

Duty not to cease to do business with customer except upon reasonable notice

One of the duties inherent in the debtor-creditor explanation of banker-customer relationship was that at the common law a debtor was supposed to seek out his creditor and pay him. If this principle were to be applied to the banker as debtor, it follows that a banker who has successfully seeks out his customer and repays him his monies would by so doing automatically close the account. This state of affairs would certainly not be in anybody´s interest. In propounding the simple contract theory of banker-customer relationship, therefore, the court in Joachimson case took care to address this point. According to Atkins LJ: ″It is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice.”

The requirements of reasonable notice will presumable allow the customer sufficient time to make alternative banking arrangements to accommodate outstanding cheques and other business relation tied to the previous account. In *Prosperity v. Lloyds Bank* [30] the plaintiff founded a ″snowball” insurance scheme which attracted widespread interest. The defendant as bankers to the scheme were to accept forms and subscriptions on behalf of the plaintiff from those interested in the scheme. It appears that one second thought, the defendant decided to disengage themselves from the scheme and gave the plaintiff one month

[22] (1860) 3 Mac 643 (HL)
[23] See Chorley v. Smart, Leading Cases in the Law of Banking Sweet & Maxwell London 6th ed 1990 p98
[24] (1923) 1 KB 504
[25] (1976) 1 WLR 964
[26] (1927) 2 KB 92
[27] Chorley & Smart Op.cit p100
[28] *The Miller*, February 2 1981 *The Times* January 21 1891
[29] In e.g The kepitigalla Rubber case (1909) 2 KB 1010 and Walker v. Manchester & Liverpool District Banking (1952) 2 All ER 650
[30] (1923) 39 TLR 372 also Buckinghal v. London and Midland Bank (1895) 12 TLR 70

notice to close their account. The court held that because the defendant had become centrally linked to the scheme, the notice given was inadequate, and it made a declaration to that effect but refused to grant the plaintiffs an injunction.

In Bank *of Commerce and Credit International v.D´Stephen´sIndustries Ltd* [[31]], the appellant bank refused to honour the respondent´s cheque for ₦230 against under cleared effect from a Rivers State government cheque in the sum of ₦255 paid in by the respondent on 23 July, 1984oordered its current account with the appellants closed. The appellant complied with this directive on 2 August, 1984 and forwarded a draft for ₦251 to the respondent representing its balance. However, on 30 July, 1984 the respondent issued a cheque for ₦162.45 which the appellant dishonoured. If the account was closed on 2 August, the cheque issued on 30 July, should have been honoured, but the appellants´ case was that though dated 30 July, the cheque was crossed and was only paid in by the payee to his First Bank account on 8 August, 1984 and reached the appellant through the clearing house on 9 August. Since the first respondents´ account was closed on 2 August the cheque was dishonoured with the words ″Drawers Attention Required". Reversing an earlier High Court decision in favour of the plaintiff (present respondent) the Court of Appeal held that the dishonor was indeed proper because the account had been closed at that instance of the respondents and this fact was duly communicated to the respondents. Emosun, JCA, while agreeing that the account was properly close, observed that: ″ a banker is entitled arbitrarily to close a current account in credit. He must give customer reasonable notice.

The learned justice of the court of Appeal held that the banker could not arbitrarily close a current account in credit. It is submitted that even if the customer´s account was overdrawn, the banker would still be wrong to close it without reasonable notice because the customer relaying on the existence of an overdraft facility may have drawn cheques on the account presumably, other types of accounts would ordinarily as per banking customer, required notice before either party can close same.

Duty to demand repayment of overdraft

The bank owes its customer whom it granted overdraft a duty to make demand for repayment, and give the customer reasonable notice to repay. one of the earliest case that touched upon this duty, was the case of *Official Receiver and Liquidqtor v.Moore* [[32]], where Dickson, J observed that: ″in view of the decision in *Joachimson case* will be incline to take the view that it would be unreasonable for a banker, after having granted an overdraft to immediately proceed to sue for it without making a demand and giving the customer a reasonable time to pay."

In *Johnson v. Sobaki* [[33]] the high court similarly held the demand by a banker was a condition precedent to an action for recovery of monies earlier given by way of overdraft to a customer. The two high court decisions referred to were found ″ very helpful " by the court of Appeal in *Angyuv. Malami* [[34]], where the respondent sought to recover the sum of ₦2,844,643.37 which were allegedly monies unauthorized removed from his account by the first appellant as manager of the second appellant, his banker.

Duty to give reference on customer´s credit and standing

Giving out information regarding the credit worthiness or financial position of their customers is part of everyday business of banking. It is one of the services which banks render to customers and is especially of immense benefits where the customer himself requests that it should be given, in the circumstance wherein he nominates his bank as ″reference". Banks must take proper care not to give false or misleading information. The extern of a banks liability for information given lay at the root of this requirement. In event of an exaggerated favourable information given in respect of a customer an inquiring party is led to take up business which he will otherwise not have accepted and consequently suffers los, the question that arises is whether the inquired party is entitled to compensation from the bank.

In the year following World War I, the opinion became widely held in England, that, when a business man gives information or advice in respect of matters on which had or should have competent knowledge to another person who he knows is likely to act upon it, he ought to be held responsible for the exercise of due care in the matter. This opinion was emphatically accepted by the House of Lords in *Hedley Byrne v. Heller & Partners* [[35]]. In that case, the plaintiffs who were advertising agents inquired through their own bankers or bank as to the credit worthiness of one of their clients, Easipower Ltd, who banked with the defendants.

The inquiry was put through to the defendants, who gave satisfactory answers but did so ″without responsibility on the part of the banker or its officials.

The plaintiffs, relaying upon the answers, placed large orders for advertising space for which they

[31] (1992) 3 NWLR (pt 232) 772
[32] (1959) LLR 46

[33] (1968) 3 ALR com 241 All NLR 657
[34](1992) 9 NWLR (pt 246) 242. See also United Bank for Africa v. Europham (Nig) Ltd (1990) 6 NWLR (pt 155) 239
[35]

did not receive payments and on the subsequent liquidation of ″EasipowerLtd” they lost more than £17,000 which they claimed from the defendants on the ground that they had been negligent. The defendants answered that they were under no duty of care towards the plaintiffs, who were their customer and that even if they were under such a duty they could not be liable as they had expressly answered the inquiries″ without responsibility the trial judge held that the defendants were in fact been negligent considering on the authorities that there was no duty of care dismiss the claim. His judgment was upheld by the court of Appeal. On further appeal, the House of Lords held that:

1. A banker who receives a request for information in circumstances which show that his skill and judgment are been relayed upon, accepts a legal duty to exercise proper care in relaying, even though he is under no contractual or fiduciary obligation to the inquirer.
2. But he is entitle to insist that he will only give the information on the bases that he does not accept such a duty and the words ″ without responsibility used by the defendants made it clear that they had taken up that position in this case. In the circumstances therefore they could not be held liable.

The decision in Hedley Byrne case became important in the general law of negligence for establishing for the first time that liability for finances loss resulting from negligent statements (as opposed to the physical injury resulting from negligent actions) was sustainable at law. The Hedley Byrne Principle was followed in a Nigerian case of *ImarselChemical Co. LtdNational Bank of Ngeria* [[36]], where Okagbue, J. held that where a banker gives a customer a reference knowing that a third party will place reliance on it and that reference contains a negligent misrepresentation that the customer is credit worthy, the banker will be liable in damages for loss which results to the third party.

In that case, the plaintiff asks for a banker's reference before giving credit to a trading company which was a customer of the defendant bank. The trading company produced a letter from the bank manager of the defendant bank which stated that the trading company was one of the bank´s good customers at the bank that was credit worthy. The statements were untrue and subsequently the plaintiff instituted proceedings claiming damages for loss caused by negligent misstatement. Judgment was entered for the plaintiff with the court relying on the Hedley Byrne Principle.

Duty to give advice on investments

Gone those days whether or not advertising on investments was within the scope of the bank´s business agitated the minds of judges and academics alike. The most visible manifestation of this dilemma found expression in the case of *Banbury v. Bank of Mountreal* [[37]]. In that case Lord Parker said: "it will be difficult establishing that advising on investment was part of the business of banking".

Lord Finlay on the other hand felt that: "the limits of a bank's business cannot be laid down as a matter of law." This latter view was adopted by Salmon J. in *Woods v. Martins Bank Ltd* [[38]], Where he went on to conclude that: "what may have been true of the bank of Montreal in 1918 is not necessary true of Martins Bank in 1958". In Nigeria today, evidence can be adduced to show that bankers regularly afford this kind of services, and, conspicuously advertise their willingness and readiness to do so. It may thus be concluded that it is incontestable true that advising on investment have become an integral part of banking business.

The legal issue that arises from this point seems to be this; if advising is within the scope of banking business, it establishes a duty as well as a yard stick of the competence, non-exercise of which will constitute negligence on the part of the bank and, thus making it responsible for the advice given by its responsible servant. A part from commercial and merchant banks that now engage in investment assistance, certain specialize banking institutions have been set up over the years to deal with investment matters.

In *Woods v. Martins Bank* [[39]], there was evidence that the bank held itself out as willing to advice as clearly is the case among Nigerian banks today. In assessing the banker's liability for any investment advice given, accounts must thus be taken of the changes which have taken place in banking practice since the Banbury and Woods cases respectively. When, therefore, a bank advises as part of its ordinary business, it comes under a duty to do so without negligence. The bankers liability in negligence for wrongful investment advise must, however, not be confused with liability for ordinary negligent advice given in respect of the affairs of another customer of which the bank must have peculiar knowledge, as in the case of *Hedley Byrne v. Haller & Partners Ltd* [[40]].

Safe custody of valuables

The growth of modern society in the country has resulted in awareness among the urban baking

[36] (1974) 1 ALR Comm 337, NCLR 337, 4 ECSLR 355, see also Sodeinde Bros (Nig) Ltd v. AC B (1977) 3 OYSHC (past 11) 151

[37] (1918) AC 626

[38] (1959) 1 QB 55 at p.70

[39](1959) 1 QB 55

[40] (1964) AC 465

public of the role of the bank as custodian of the valuables. Deposit of valuable for safe custody belongs to the area of law of bailment. Bailment refers to the delivery of chattel by one party (bailor) to another (Bailee) on the understanding that the chattel shall be redelivered to the bailor or his nominee at the future date. Among items commonly deposited with bankers for safety reasons are educational certificates, title deeds, share certificates, heirlooms and jewelry.

For practical purposes, it may be worth pointing out that legal actions against Nigerian banks arising out of safe custody of valuables are rear. Research did not yield many reported cases litigated before our courts. Nevertheless it may be submitted for academic purposes at least, that claims against banks for missing and/or destroy valuables may ground largely in conversion of negligence in earlier times a distinction was considered between a gratuitous bailee and a paid bailee for reward. In this regard, the question then was; is the banker a bailee for reward, with the liabilities attaching to that position or gratuitous bailee with only the liabilities for such? Paget considers such a question to be largely academic. Chorley [41] takes the same view as Paget a much the same words.

Since the banker does not usually make a specific charge for taking care of his customer´s valuables, one school of thought considers him a gratuitous bailee. On the other hand, some authorities contend that the practice of taking charge of their customers valuables has grown so widespread that it should be seen as a consideration for the customers opening their accounts as some of a banker´s other services undoubtedly are. Therefore, it is contended that a banker is a bailee for reward. The reason for this revival contentious stems from the natures of duties and responsibility attached to either form of bailment. The duties and responsibility attaching to a pay bailee been naturally greater than those devolving on an unpaid bailee.

Chorley [42] opines that for practical purposes the most important issue raised in respect of bailmments relates to the degree of care required to the bailee in relation to the property while in his custody. If goods are lost or damaged or destroyed while under the bailee´s care, is he in such circumstance responsible to the bailor? The answer he further submitted is that an ordinary baillee or common bailee for safe custody is not responsible for such loss unless this was caused by some negligence on his part or unless he deceivers to the third party without his customers authorization or possibly as a result of the fraudulent conduct of his servant. In the words of Lords Chelmsord, in*Giblin v. Mc Mullen* [43], a gratuitous bailee˝is only bound to take the same care of the property entrusted to him as a reasonable prudent and careful man may fairly be expected to take off his own property of the like description ”.

On the other hand a paid bailee or bailee for rewards must do more than this. He must safeguard the property by every means in his power and to bring about this must employ the most effective appliances possible or if his business be that of a bailee, according to that standard which could be reasonable be expected of a person in similar business. All in all, the tendency today is to disregard the old distinctions between ˝ gross negligence and ˝ ordinary negligence. Courts prefer to take the objective test of a reasonable man in particular circumstances of the bailement in question.

A good example of this approach is provided by Omerod L.J. in the case of *Houghland v. R.R.* Low (luxury Coaches) Ltd [44], were the learned Law Lord said that he had always found it difficult understanding what ˝gross negligence meant: ˝ the question we have to consider in a case of this kind… is whether in the circumstances of this particular case a sufficient standard of care has being observed by the defendant or their servants.

All said therefore, it appears that a banker as bailee is oblige to take such degree of care as any other diligent and prudent banker within the banking industry will take in similar circumstances given the state of modern advances in protective technology.

LEGAL INSTRUMENTS AND THE MECHANISMS OF BANK REGULATIONS IN CAMEROON

This head provide a critical examination of the legal instruments and mechanisms of bank regulations in Cameroon.

The Legal Instruments governing the banking industry in Cameroon

The banking industry in Cameroon is governed by a series of enactments (conventions, laws, ordinance, presidential decrees, ministerial orders and circulars). These enactments are frequently amended and annulled due to contradictions and difficulties in their interpretation and implementation. In this regard, it’s clear that banking regulation in Cameroon emanates from both within and without the country. They emanate from both the local ministry of finance and COBAC (whose supervisory mandate covers the other 5 CEMAC countries). BEAC is the sole central bank for the six countries and have operational branches in each of the six member countries while COBAC supervisory powers also cover the six member countries.

[41] Chorley Op. cit p.245
[42] Ibid p.243
[43] (1868) L.R.2 PC 317
[44] 51962) 1 QB 694

It is interesting to note that the first national law relating to the control of banking profession in Cameroon was Decree No 62/DF/90 of 24th March 1962 Regulating the Banking Profession in Cameroon. The Decree equally established bodies to carry out research into credit policy and to ensure its application and control the banking profession. This Decree remained in force until 1973 when it was replaced by Ordinance No 73/27 of 30th August 1973 Regulating the Banking Profession. In 1985, Ordinance No 85/02 of 31st August 1985, Relating to the Operation of Credit Establishment was passed. It replaced the 1973 Ordinance.

The Ordinance N° 85/002 of 31 August 1985 relating to the establishment of Credit Institutions or Loan Houses is one of the most important Texts regulating the Banking Sector in Cameroon.

This Ordinance has been ratified by Law N° 88/006 of July 1988 and Law N° 90/019 of August 10, 1990. These laws repeal the old practice whereby only persons of Cameroonian nationality had the privilege to head banking institutions in Cameroon.

Ordinance N° 90/6 of October 26, 1990 on its part exempts banking institutions from the payment of registration fees and stamp duties on all Deeds and Judgments relating to transfer and or resale of immovable property.

International and regional treaties and conventions have actually been established by the international community to regulate the banks and the exercise of the banking profession. The principal international bank legislation applicable in Cameroon are, the Convention of 16th October 1990, creating the Banking Commission of Central African States (Commission Bancaire de l'AfriqueCentrale) COBAC and the Convention of 17th Jan. 1992 on the Harmonisation of Banking Regulations in the Central African States.

The main banking regulatory instrument is the COBAC Text of 17 January 1992 harmonizing banking regulations in the six member States of BEAC. This text differentiates banks from other financial institutions, makes provision for licensing procedure of financial institutions appointment of its key executive members and sanctioning of contravening institutions, indicates minimum paid up capital, capital adequacy for operation of financial institutions and finally, makes provisions on risk coverage sharing and liquidity ratios.

The Mechanisms of Bank Regulations in Cameroon

In the section that follows, we have highlighted and criticized specific aspects of bank regulations in Cameroon.

Regulation on Capital Adequacy

Most banks in Cameroon especially the locally-owned banks are considered as being heavily undercapitalized,[45] as they have a capital adequacy ratio of less than 8%. Even though the minimum capital was recently increased from $2000000 to $4000000; observers still consider Cameroonian banks as being undercapitalized as most have a leverage ratio below 5%.

The importance of capital to the soundness of any banks cannot be overemphasize here, capital (especially equity) help fight moral hazard by ensuring that banks have much to loss when they involve themselves in any risky behaviours. Capital also functions as a cushion when bad shocks do occur, making it less likely that the financial institutions will fail, thereby directly adding to the safety and soundness of financial institutions. [46] Without comprehensive legislation to handle the undercapitalized nature of these banks, the regulatory authorities will be overwhelmed by many banks which will be seeking financial assistance and exhaust their "lender of last resort" funds. To avoid this situation, the regulatory authorities should undertake extensive research to determine the appropriate capital level that will place banks in the country in a save capital position and set the scene for them to make their rightful contribution to the country's economy.

In stipulating capital requirement for banks, regulatory authorities in Cameroon must also take into consideration the risk-based capital requirement as stated in the Basel Committee on supervision, which ties capital to the risk level of banks. Considering the limitations of the Basel 1 Accord, regulators must ensure that they follow the never-ending work of the Basel committee on bank capital requirement.

The minimum share capital requirement varies with the type of credit institution. For banks, the fully paid-up capital is US $2.000.000, although a proposal that this be increased to US $4.000.000 is under consideration. No fixed legal reserve requirement exists in the Cameroon Banking Industry. The capital and equal ratio is 8%. Generally, very detailed and complex calculations are provided to arrive at the respective prudential ratios.

Regulation on Incorporation

According to the 1985 ordinance, there is no restriction on ownership; hence it's possible for the existence of 100% privately-owned banks and offshore offices of foreign banks. The ordinance of November 1990 ushered in a new investment code, that gave equal rights before the law of both local and foreign investors (both individuals and corporate). According to later ordinances, commercial banks are only types of banks allowed in the country; these banks are expected to

[45] See IMF, 2009.

[46] See Mishkin, 2010.

operate as public limited liability companies (even though their shares are not yet publicly traded).

Since the enactment of the 1985 Ordinance, there is no restriction on ownership, hence the existence of 100% privately-owned banks and the possibility to have offshore offices in the country. Also, by Ordinance N° 90/7 of 18 November 1990 a new Investment Code was instituted in Cameroon. Its all-embracing purpose is to encourage and promote productive investment in the country.

This Investment Code offers alluring conditions to investors in the form of guarantees. Investment in the Banking Sector is opened to all natural persons or corporate bodies of Cameroonian or foreign nationality, irrespective of their place of residence. Hence foreign nationals have the right to enjoy the same liberties and protection of the law as those granted Cameroonian natural persons or corporate bodies. Foreign nationals also have the right to enjoy the manifold rights governing property ownership, concession and administrative authorizations. They also enjoy the right to compensation in the case of illegal expropriation. Foreign investors have the right to hire and fire labour in compliance with the Labour and Social Insurance legislations in force.

There is also the right to freely transfer proceeds of all kind from the invested capital and in case they cease to operate, the balance of the liquidation. They are also free to transfer out of Cameroon, funds representing normal and current payments for supplies and services effectively performed, particularly in the form of royalties and sundry remuneration.

Regulation on Prompt Corrective Action, Chartering and Examination

COBAC, the regulatory and supervisory arm of the regional central bank carry out prompt corrective actions to ensure that banks in the country and sub region are adhering to instructions laid down by them while the local ministry of finance does the same. This arrangement however hampers both bodies from fully carrying out such duties, firstly COBAC is reported to have limited resources (especially human), and considering the large geographical area that they cover, this adversely affect the number of times they may take prompt actions to correct an abnormally in the system. Secondly having two regulators may create problems with the demarcation of jurisdictions, this may lead to a situation where certain areas may be neglected or even the possibility of duplicating roles. Considering the importance of prompt corrective action which in most cases serves to restore sanity and confidence in order to avoid runs on the banking system, an action that requires regulators to take quick actions, having two regulators only goes to delay such prompt actions.

Overseeing who operates financial institutions and how they are operated, referred to as financial or prudential supervision is an important method of reducing adverse selection and moral hazard in the financial sector, (Mishkin, 2010). Through chartering, proposals for new institutions are screened to prevent unwanted people from controlling financial institutions. Again the dualregulators only goes to delay the issuing of such license as both finance ministry and COBAC must both give their approval before a license is issued.

The same applies with the examination role, who should examine banks? COBAC or the ministry of finance? Even though attempts have been made to demarcate duties between the two regulators, there are still times when such question arises. With COBAC's staff challenges while having a wide area to cover, the CAMELS rating may not be undertaken. The acronym is based on the six areas assessed: Capital adequacy, Asset quality, Management earnings, Liquidity, and Sensitivity to market risk [[47]]. Without getting such information about a bank's activities, it would be difficult for regulators to correctly assess the health of banks talk less of enforcing laid down regulations.

Banks however submit regular reports to both COBAC and the ministry of finance, such report are intended to reveal banks' assets, liabilities, income, dividend, ownership, foreign exchange and other details. Both regulators also make unannounced visits to banks, but as earlier mentioned inadequate staffs at COBAC are hampering such visits.

Regulation on assessment of risk management

Managing risk is a very important part of the management of any institution, most especially banks. Innovations in the financial industry has produced new markets and instruments and make it very easy for banks and their employees to make huge bets easily and quickly, this make the absence of a comprehensive risk management regulation very worrying. Examination that focuses only on a financial institution's position at a point in time may not be effective in indicating whether they are in fact taking on excessive risk. This also fails to assess the soundness of banks management processes with regards to risk management.

The absence of risk management assessment tools by the supervisory/regulatory authorities in Cameroon means that risk management rating systems such as does use as part of the CAMELS protocol use by the US Federal Reserve and the Comptroller of currency in the US are not existent. The four element in sound risk management under this system ratings from 1-5 on (1) the quality of oversight provided by the board of directors and senior management (2) the adequacy of policies and limit for all activities that present significant risk, (3) the quality of risk

[47] See Mishkin, 2010.

measurement and monitoring systems, and (4) the adequacy of internal controls to prevent fraud or unauthorized activities on the part of employees [48].

These ratings have the potential of exposing risk management flaws by banks, which will serve as early warning signs for regulatory authorities and hence make their work easier. Other areas of regulatory risk management intervention should include; banks' management of interest rate risk, operational risk, credit risk, market risk and the huge liquidity risk that the country's banks face. Monitoring could also be done to track the implementation of tools such as stress testing, which calculate losses under dire scenarios, or value-at-risk (VaR) calculations, which measures the size of the loss on a trading portfolio that might happen 1% of the time-say over a one month period. Even though one could argue that since the banking sector in Cameroon is underdeveloped and does not have such sophisticated products found in other market, which make it easy for banker to take quick bets, this does not excuse the absence of a comprehensive risk management regulation.

Bank charges are regulated by the Ministry of Finance. The lending rate is approximately 22% without taxes. (This has recently been increased from 17%). Foreign exchange commissions of between 1.5% and 4% apply both to selling and buying. Deposit rates apply at a maximum rate of 8% with a base rate of 4.5%. Other charges apply, on average at a rate of 15% on the transaction amount. A single borrower's limit must not exceed 45% of the Bank's capital funds.

Regulation on consumer protection

Apart from the fact bank charges and other charges such as charges on foreign exchange transactions are regulated by the ministry of finance, there is no broad consumer protection regulations that to protect consumers from unfair treatment of any kind. As the recent subprime crises illustrated to us, millions of borrowers took out loans with terms that they not understand and which were well beyond their means to pay. The crises have proved to us that consumer protection is much more than charging exorbitant rates, it involve information disclosure and much more. Legislations such as the National Credit Act in South Africa that was put into law a couple of years ago are good example to emulate.

Regulations on lending limit and government safety net

According to legislations, banks' lending to one borrower must not exceed 45% of its funds and total loans to borrowers representing over 15% of capital fund, must not in aggregate exceed the total of net capital. The high figures in a nutshell simply reiterate the fact that credit lines in the country are only available to a few high net worth individual and still represent high risk positions for banks.

As earlier alluded to, there is no deposit insurance in Cameroon. The absence of deposit insurance is in line with research carried out by the World Bank, which found out that, on average, the adoption of explicit deposit insurance was associated with less banking stability and high incidence of banking sector stability [49]. They also found out the deposit insurance retarded financial sector development. However the negative effect of such scheme was found to appear in economies with weak institutional environments: the absence of the rule of law, ineffective regulation and supervision of financial sector and high corruption [50]. With Cameroon's economy mirroring most if not all of the above stated qualities, the absence of a deposit insurance scheme is sensible decision to take.

In the absence deposit insurance, the only other government safety net has been the central bank playing the famous lender of last resort role. However, the experience of Cameroonian with previous banking crises has shows that the central take a very long time to execute this duty and sometime intervene when it's too late. Intensifying early warning signals will be a step in the right direction.

Total loans to one borrower must not exceed 45% of capital funds. Total loans to borrowers representing over 15% of capital fund, must not in aggregate exceed the total of net capital [51]. There are no protection schemes in the form of deposit insurance or reserve asset requirements, save the prudential regulations in place and monitored by COBAC - the banking police.

Regulation on asset holding

Bank regulations that restrict asset holdings are directed at minimizing moral hazard behaviors by banks that can cost taxpayers dearly in bailing them out. Even in the absence of government safety nets, as in the case in Cameroon, financial institutions still have the incentive to take on too much risk. Risky assets may provide financial institutions with higher when they payoff; but if they do not pay off and the institution fails and depositors are the ones to loss. Because depositors are unable to get information on the operations of banks in order to punish them when they are taking excessive risk, the government through its regulators remains the only way by which to impose market discipline by restricting the holding of certain high risk assets such as common stocks. The regulator

[48] Mishkin, F. 2010. The Economics of Money, Banking and the Financial Markets, 9th Ed. Pearson.

[49] See World Bank, 2001.

[50] Ibid.

[51] Bruyn, S. T. "The Moral Economy." Review of Social Economy 57.1 (1999): 25–46.

should in the same vein also promote diversification and reduce risk by CFA loan amount to particular sectors or individual borrowers [52].

Regulation on bank secrecy

In Cameroon, banking secrecy is contained in the internal regulations of each bank and even on employment contracts. The Cameroon Penal Code in its Sections 74 and 310 lays down the penalties for breach of confidentiality. The Penal Code also provides sanctions for counterfeit and laundering. The practice of usury is a common and very dynamic phenomenon in Cameroon. Non-financial institutions and individuals sometimes lend money at exorbitant interest rates of more than 3O% against normal bank rates of 22%. The Cameroon Penal Code in its Article 325 also sanctions this illegality.

CONCLUSION AND RECOMMENDATIONS

Banks in Cameroon, both domestic- and foreign owned have been found to offer loans only to a few high net worth individuals and corporate, with a narrow range of product offering. This state of affairs has leaved most Cameroonian without any contact with the financial world. In this regard, the following recommendations are timely:

One possible solution for the legal protection of banking industry in Cameroon is for Cameroon to take steps at its sovereign national level to strengthen the protection of consumers in the banking transactions. Such steps will go a long way to fill the gap of uncertainty with regards to the protection of banking industry in Cameroon.

Another possible solution to the uncertainties is improving court procedures are of utmost importance. In a country like Cameroon where corruption has infected the courts, judges also struggle with commercial issues of the law. Without training these judges or creating specialized commercial courts, these inefficiencies delinquent borrowers (that could, but will not pay) hide can be dismantle. This will require legislation and much more to do.

[52] Steiner, Rudolf (1999). *Towards social renewal: rethinking the basis of society*. London: Rudolf Steiner Press. pp. 8 and Chap. 3.