

FAILURE OF ASSURANCE BANK NIGERIA LIMITED

1.0 INTRODUCTION

Assurance Bank Nigeria Limited (hereinafter referred to as the bank) was originally established as Nigeria-Arab Bank (NAB) Limited in 1962. Pursuant to the Federal Government Indigenization Policy in the 1970s, the Federal Government of Nigeria acquired 60% equity interest while its original foreign shareholders were left with a minority 40% equity interest. Due to divergent goals and change of business model, the pioneer foreign shareholders decided to divest. The National Insurance Corporation of Nigeria (NICON) acquired the divested shares. The bank became a wholly-owned Nigerian venture while its name was changed to Assurance Bank Nigeria Limited in subsequent developments showed that there was a disagreement between the Federal Ministry of Finance and NICON Insurance over the bank's Board composition. Thereafter, the bank fell under the purview of the Bureau of Public Enterprises (BPE) which had the mandate to source for new investors to recapitalize the bank. In November 2002, the Central Bank of Nigeria (CBN) approved the acquisition of the bank by Nigerian investors in the belief that it had been adequately recapitalized. The investors included the promoters of proposed Almond Bank whose banking license approval-in-principle was withdrawn by CBN after the deadline date of 31 December, 2005 recapitalization deadline..

Upon acquisition, the bank's Board was reconstituted and it commenced operations with its Head Office located in Victoria Island, Lagos. The bank had 23 branches as at closure on 16th January 2006. The actions of some Board members and the Management suggest that they had a hidden agenda to plunder the bank rather than use it to meet the needs of its customers.

The scope of this case study is limited to the short lifespan (November 2002 to January 2006) under its new acquirers. Issues predating the acquisition by new investors are not covered by this study.

The rest of this study has been organized into 4 Sections. Section 2 provides an overview of the bank's performance while Section 3 highlights the core reasons for its failure. Section 4 focuses on failure resolution while Section 5 provides some learning points and conclusion.

2.0 OVERVIEW OF BANK PERFORMANCE

This overview of the bank's performance is based mainly on Bank Examination Reports and its audited financial statements. The CAMEL (Capital Adequacy, Asset Quality, Management, Earnings and Liquidity) parameters have been adopted to analyse the bank's performance starting with Management which is critical to the soundness of a bank's operation and long-term viability.

2.1 Board and Management

Shortly after acquisition, a ten-member Board was constituted, three of which were Directors. The appointment of one of the Directors raised doubt as to how rigorous was the "fit and proper persons" test conducted by CBN. It would be recalled that he was among the Directors of Citizens International Bank Limited as at the time that bank was penalized by CBN for its involvement in illegal free fund foreign exchange (forex) transactions in 2002. The penalties imposed on that bank included refund of illicit profit to CBN as well as a ban from forex transactions for one year. His approval as one of the Directors of another bank in the same year 2002 effectively extricated him from the harm done to Citizens Bank under his watch. Furthermore, a joint CBN/NDIC investigation of allegations of malpractices by some former Directors of Citizens Bank in 2004 seriously indicted one of the Directors. As a matter of fact, the investigation revealed that he signed a letter of undertaking to the Board of Citizens Bank that he would recover ₦943million which he granted as credit facilities to parties related to him without following due process before his resignation was accepted. A rigorous due diligence on one of the Directors by CBN could have warranted a decline of his appointment of Assurance Bank.

Corporate Governance in the bank was below acceptable standard. Its collapse manifested in financial impropriety, abdication of Board responsibility, unethical and unprofessional conduct, concealment of information and flagrant violation of laws, rules and regulations.

The Board, in pursuit of its oversight function, established three Committees, namely ; Board Finance and General Purpose Committee (FGPC), Board Credit Committee (BCC) and Board Audit Committee (BAC). However, the membership of these committees was skewed in favour of the Executive Management. Each Committee had five members comprising three Executive Directors and two others. The Committee composition was at variance with the norm for a supervisory Board. The dominance of Executive Management on Board committees is symptomatic of abdication of Board responsibility. It was noted that the Board Committees did not meet regularly. For instance, over a period of one year only the BCC met twice while the two other Committees did not meet at all. The failure of the Board Committees to meet provided ample opportunity for reckless mismanagement of the bank's resources by the Executive Management.

As was the case with the Board, the Executive Management had three Committees, namely; Management Credit Committee (MCC), Assets and Liabilities Committee (ALCO) and Management Disciplinary Committee (MDC). Notably, only ALCO met once over a period of one year while the two other Committees did not meet at all. Even though the MCC did not meet, credit facilities within its purview were approved over the period. Similarly, disciplinary cases that should have been referred to the MDC were dealt with without recourse to it.

In the circumstance, the Committees set up by both the Board and Management was merely on paper while the Management exercised powers far beyond its limit. Undoubtedly, the Board failed to demonstrate its capacity to superintend over the affairs of the bank by providing purposeful leadership and strategic direction. The passive role of the Board enabled the Management to engage in unethical,

unprofessional and fraudulent practices which include financial impropriety, opaque capitalization, violation of credit approval limit, concealment of credits, conversion of third-party shares as collateral, violation of foreign exchange market regulations and sale of GSM recharge cards. Some of these unwholesome practices are discussed below, while others are discussed under asset quality and capital adequacy,

1. Financial Impropriety

One of the Directors had an expenditure approval limit of ₦10million but it was noted that he unilaterally approved various payments in excess of that limit. The expenditures were made in favour of Companies related to him . A catalogue of some of these fraudulent expenditures which amounted to ₦873.335.604.15 within 10 months of acquiring the bank is given hereunder.

i. Payment to Solutions Investment Limited

The payment of ₦45million to Solutions Investment Limited (SIL) was approved by one of the Directors on 6th January 2003, barely two months after acquisition of the bank. The payment was purported to be for sundry services rendered by SIL, a Company in which one of the Directors was a Director of the bank. The bank's cheque number 26689 was issued in favour of SIL but the amount was cleared into account 0140010008739 belonging to Parmex Gensec Consortium Limited (PGCL) which was related to one of the members of the Board at the Victoria Island branch of Access Bank Plc.

The amount paid to SIL was used to liquidate PGCL's obligation on bankers' acceptance (BA) facility of ₦45million obtained from Access Bank Plc on 31st October, 2002 prior to the acquisition of the bank in November, 2002. The cheque was lodged in PGCL's account in Access Bank Plc and that wiped out the outstanding debit balance of ₦44,046,407.11 in it, even though there was no evidence of sundry services rendered to the bank by SIL for which the payment was approved and made. The settlement of the obligation of PGCL to

Access Bank Plc is fraudulent unless evidence of service rendered is provided.

ii. Payment to C-Oil Services

One of the Directors of the bank who was also a director of C-Oil Services Limited (CSL) approved various payments totaling ₦191,715,000 between 27th February, 2003 and 8th October, 2004. The payments were made through the issuance of various cheques and drafts of the bank in favour of CSL and cleared into its account number 0011101006926 at Victoria Island branch of Oceanic Bank International Plc. The vague narrations to justify the payments included “payments for transaction concluded” and “sundry payments” whatever they meant. The various payments were utilized to service ₦200million BA facility which CSL obtained from Oceanic Bank on 4th July 2002. The bank’s Management could not provide evidence of any service rendered to it to warrant such huge payments. The transaction is considered fraudulent unless evidence of service rendered is provided.

iii. Payments to Allstates Trust Bank Plc

On 7th March, 2003 one of the Directors approved sundry payment of ₦162,560,000 to Allstates Trust Bank Plc vide cheque number 26957. Another amount of ₦99,658,740.66 was approved also as sundry payment to the same Allstates Trust Bank Plc on 23rd April 2003 with manager’s cheque number 735. In a similar fashion as the earlier transaction involving CSL, the company borrowed ₦400million from Allstates Trust Bank Plc on 2nd August, 2002. The two instruments which totaled ₦262,218,740.66 were cleared and credited to the account of CSL in Allstates Trust Bank Plc to repay its obligations. Again, even though it was CSL that owed Allstates Trust Bank Plc, the repayment was effected with the bank’s fund.

iv. Other Sundry Payments

One of the Directors authorized and approved nineteen (19) other sundry payments for various undisclosed transactions from 6th January

to 20th August, 2003. These 19 apparently dubious payments tabulated hereunder, totaled ₦374,401,863.49 within a period of less than 8 months.

| DATE | INSTRUCTION | AMOUNT (₦) | BENEFICIARY | REMARKS |
|---------|---------------------------------|---------------|---|---|
| 7/1/03 | Bank Draft No. 26686 | 6,000,000.00 | First Chartered Investment Ltd related to the MD/CEO's wife | Draft cleared through A/c 01200468/001/0038/000 in GTB belonging to the First Chartered Insurance Co. Ltd, a company where MD/CEO'S wife is a Director. The bank did not disclose the purpose of the payment. |
| 7/1/03 | Bank Draft No. 026687 | 15,000,000.00 | Cyan Nig. Ltd. | Draft cleared through A/c 0020001118 in Equity Bank Nig. Ltd |
| 6/1/03 | Bank Mgr's Cheq. No. 000059185 | 8,000,000.00 | Calvary Concepts | Payment for Sundry services. |
| 6/1/03 | Bank Mgr's Cheq. No. 000059188 | 29,800,000.00 | Equinox Ltd. | Pyt. for sundry services in bank's books |
| 6/1/03 | Bank's Mgr's Chq. No. 000059184 | 4,785,036.02 | Value Stream Inv. | Described as sundry services in bank's books |
| 6/1/03 | Mgr's Chq. No. 000059183 | 2,088,090.61 | Fibrefield Nig Ltd | Described as sundry services in bank's books |
| 6/1/03 | Bank's Mgr's Chq. No. 000059182 | 971,688.49 | Ausdith Investment | The beneficiary is related to the bank's MD/CEO. Payment was described as sundry services in bank's books |
| 6/1/03 | Bank's Mgr's Chq. No. 000059181 | 6,715.903.41 | AlaPakassa | Described as sundry services in bank's books |
| 28/1/03 | Bank' Mgr's Chq No. 000059305 | 20,850,000.00 | C-Oil Services Ltd related to bank's MD/CEO | Bank claimed that payment was for finncle application. Meanwhile, promoters of Almond Bank, a company which co-financed the acquisition of the bank as a result of withdrawal of the provisional banking licence earlier granted to it by CBN, had earlier paid for the same application. |
| 19/2/03 | Bank' Mgr's Chq No. 000059381 | 11,794,520.55 | Technology Distribution Ltd | Described as payment for transaction concluded, the nature of which was not disclosed |
| 19/2/03 | Bank' Mgr's Chq No. 000059377 | 80,000,000.00 | Bureau of Public Enterprises (BPE) | Payment was said to be part pyt of BPE deposit liabilities. The transaction was debited |

| | | | | |
|---------|-------------------------------|-----------------------|---|--|
| | | | | to a special suspense account and later reversed and debited into BPE's time deposit account no. 00139100001 in Treasury Oprs. Department |
| 27/2/03 | Bank' Mgr's Chq No. 5677589 | 5,801,369.86 | Solutions Inv. Ltd related to the bank's MD/CEO | Chq paid into Solutions Inv.Ltd A/c 1110621511 in Ecobank Nig. Plc |
| 5/3/03 | Bank' Mgr's Chq No. 026944 | 13,186,000.00 | Solutions Inv. Ltd related to the bank's MD/CEO | Same as above |
| 9/4/03 | Bank' Mgr's Chq No. 5798915 | 21,500,000.00 | Solutions Inv. Ltd related to the bank's MD/CEO | Same as above |
| 17/6/03 | Bank's Chq No. 89738 | 3,250,000.00 | Solutions Inv. Ltd. related to MD/CEO | Same as above |
| 25/7/03 | Bank' Draft No. 90065 | 3,200,000.00 | Solutions Inv. Ltd. related to MD/CEO | Same as above |
| 20/8/03 | Bank's Chq No. 5776004 | 36,000,000.00 | Solutions Inv. Ltd. related to MD/CEO | Same as above |
| 19/2/03 | Bank' Mgr's Chq No. 000059379 | 57,012,556.70 | Universal Trust Bank Plc | Bank claimed that payment was in settlement of proposed Almond Bank's indebtedness to Universal Trust Bank. The indebtedness was said to have been disclosed in the Statement of Assets and Liabilities, which the bank took over from the subscribers to the proposed Almond Bank led by the bank's Deputy Managing Director (DMD). The group had to join Assurance Bank following the withdrawal of approval in principle earlier given for the establishment of Almond Bank by the CBN. |
| 6/3/03 | Bank' Mgr's Chq No. 000059471 | 48,446,697.85 | Universal Trust Bank Plc | Same as above |
| | TOTAL | 374,401,863.49 | | |

v. Use of Third Party Shares as Collateral for Bank's Facilities.

The bank had liquidity squeeze due mainly to the mismanagement of its resources. The problem became noticeable on 16th August 2004 when its clearing account with UBA Plc was overdrawn by ₦28,764,130.39. As the

problem of illiquidity heightened the overdrawn position peaked at ₦979,651,647 as at 31 October, 2004. The bank approached and obtained a N300million facility from UBA on 15 October, 2004. The facility was secured with 5million shares of African Petroleum (AP) made up of 2million shares belonging to Tabony Ventures Ltd and 3million shares in the name of Caliphate Ventures Ltd. The identities of the owners of these two companies were not disclosed even though the Executive Management claimed that the third parties allowed the bank to use their shares as collateral for the facility sourced from UBA. According to the Management, these third parties allowed the use of their shares with a caveat that they should not be sold without their expressed permission. Without evidence that the third parties consented to the sale of the shares, part of the shares was sold and the proceeds used to service the bank's facility with UBA. The quantity and price of sale were not disclosed and the method of restitution of loss of assets to the third parties was not disclosed. Meanwhile, the search conducted at the Corporate Affairs Commission (CAC) on Tabony Ventures Ltd and Caliphate Ventures Ltd revealed that they were not registered companies. In effect, the bank was dealing with companies whose existence could not be verified at the CAC.

2.0 Non-Compliance with Foreign Exchange Regulations

2(a) Invisible Trade Transaction

Some of the Directors of the bank and their relations procured business travel allowance (BTA) and personal travel allowance (PTA) with improper documents. These made the bank to contravene the provisions of Memorandum 9(1)(i)(a) of Foreign Exchange Instruction Manual and Section 4.2.1 (xv) of Monetary, Credit, Foreign Trade and Exchange Policy Guidelines for Fiscal 2004/2005 (Monetary Policy Circular No. 37) issued by the CBN. The transactions under reference which made the bank liable to sanction in accordance with Section 60 of BOFIA, 1991 as amended are highlighted in the table below.

Transactions on Non-Compliance with Foreign Exchange Regulations

| S/N | Director/Relation | Particulars | Amount(\$) | Documentation Lapses |
|-----|-------------------|--------------------------------|----------------|--|
| 1 | Director | BTA/04/002 | 2,500 | The beneficiary used stale air ticket |
| 2 | Director | BTA/04/009 \$ BTA/04/017 | 2,500 2,500 | Both beneficiaries use the same air ticket. |
| 3 | Director | BTA/04/003 | 2,500 | 1). The BTA was disbursed without valid visa. ii). The beneficiary recycled the air ticket with a route not related to Nigeria |
| 4 | Director | BTA/04/019 | 2,500 | i). The beneficiary used recycled ticket already used for BTA/04/003 ii). The BTA was disbursed without valid visa |
| 5 | Director | BTA/03/086 PTA/03/43 | 2,500 2,500 | 1). The BTA was disbursed without valid visa. ii). Both the BTA and PTA were simultaneously disbursed while the processing was done with the same set of documents. |
| 6 | Director | BTA/03/087 PTA/03/430 | 2,500 2,500 | i). The beneficiary used one way air ticket. ii). Both the BTA and PTA were simultaneously disbursed while the processing was |

| | | | | |
|--|--|--|--|--------------------------------------|
| | | | | done with the same set of documents. |
|--|--|--|--|--------------------------------------|

2 (b). Use of An Invoice for Double Forex Remittances

The bank transferred \$342,903.50 to Intec Solutions Limited London on 24th June, 2004. The payment was in settlement of the invoice number 2700 issued by that company for the supply of software to Zinox Technologies Limited (related to the then Chairman). Barely a month later, precisely on 29th July, 2004, the same amount of \$342,903.50 was transferred using the same invoice number 2700 and for the same transaction as the first one. The two invoices were found to be both original and carried the same narration. It was obvious that the bank used the same invoice twice to transfer forex in contravention of Section 4.2.7 (v) of the Monetary Policy Circular No. 37 for which it was liable to sanction under Section 60 of BOFIA, 1991 as amended.

3 Sale of GSM Recharge Cards

The bank engaged in the sale of GSM recharge cards in violation of the provision of Section 20 (2)(iii)(c) of BOFIA 1991 as amended as there was no written CBN approval before the bank engaged in that line of business. Certainly that was not a banking business and the bank was not licenced to undertake it. The lack of control of the recharge cards provided avenue for misstatement of stocks in Calabar branch where a shortfall valued at ₦415,119.03 as at 31st October, 2004 was discovered. No doubt this was another avenue through which the executive management mismanaged the resources of the bank.

5.0 Other Matters of Concern

5 (a) Absence of Disaster Recovery Plan

Best practice requires that the bank should put in place a disaster recovery plan (DRP) to facilitate business continuity within a short period in the event

of a disaster. The lack of a DRP in the bank would adversely affect its ability to continue operation without disruption or with accurate data in the event of a disaster that might destroy its database. That was a major weakness in managing operational risk to which the bank was exposed.

5 (b) Culture of Personal Allegiance

One of the Directors promoted a culture of personal allegiance in order to weaken the internal control system as reflected through staff deployment. Out of 354 senior staff, 60 were sourced from his former bank where he was the Director before his appointment in 2002. It was also noted that 23 out of 48 staff on the grade of Deputy Manager and above were from his former bank. Strategic positions such as Company Secretary, Head of Inspection Department and Treasurer were occupied by loyalists from his former bank. The morale of other staff was dampened as they believed they were sidelined in the management of the bank. Given the deployment of staff, it was easy for the Director to accomplish his grand design to loot the bank without any of his loyalists raising alarm.

5(c) Inspection Function

The scope and depth of the inspection function was not satisfactory as vital areas such as review of risk assets and anti-money laundering surveillance were excluded. It was even apparent that the Inspectors were either not independent or incompetent or both given the numerous financial impropriety and infractions in foreign exchange operations.

In addition, to the already noted corporate fraud, the bank reported other fraud cases involving about N40.7million within the period of one year, November 2003 to October 2004 to the CBN and NDIC.

Out of that amount, about ₦24.3million was reported lost. The frauds were carried out in collaboration with staff which indicated the level of malaise in the bank.

4 Contraventions of Laws, Rules and Regulations

The summary of contraventions of laws, rules and regulations was worrisome. Evidence abounded that most of the fifteen (15) violations were willful. Such level of contraventions could only occur in a bank where there was complete breakdown of corporate governance as was the case in Assurance Bank before its failure. The summary of contraventions as at 31st October, 2004 are listed hereunder

- i. The bank did not notify the Corporate Affairs Commission (CAC) of the increase in its authorized share capital from N2billion to N10billion within 15days of approval as required by Section 102(2) of Companies and Allied Matters Act (CAMA) 1990.
- ii. Contrary to the provision of Section 19 (3)(a) of BOFIA, 1991 as amended, one of the Directors of the bank was a director in Solutions Investment Limited and C-Oil Services Limited, which were not subsidiaries of the bank.
- iii. The bank rendered incorrect returns on credit to the Regulatory Authorities as at 31st October 2004 in violation of Sections 24 and 25 of BOFIA, 1991 as amended.
- iv. Contrary to the provisions of Memorandum 9(1)(i)(a) of Foreign Exchange Instruction Manual and Section 4.2.1 (xv) of Monetary Policy Circular No. 37, the bank allowed some of its Directors and their relations to procure BTA and PTA without proper documentation thereby committing offences punishable under Section 60 of BOFIA , 1991 as amended.
- v. The bank violated the provision of Section 4.2.7 (v) of the Monetary Policy Circular No. 37 when it disbursed the sum of \$342,903.50 twice based on one invoice to Intec Solutions Ltd London for supply of software to Zinox Technologies Ltd a company related to its Chairman.
- vi. The bank allowed some of its customers to open accounts without documents such as reference form, Board resolutions, and evidence of identification, in violation of CBN circular BSD/DO/CIR/V.1/01/24 dated 28th November 2001 on Know Your Customer (KYC) and the Money Laundering Act, 2004.

- vii. Contrary to the provision of Section 20 (2)(iii)(c) which prohibited the bank from engaging in trading, the bank engaged in the sale of GSM Recharge Cards, a line of business for which it was not licenced.
- viii. The bank had an open position above the zero limit prescribed for it as at 31st October 2004, in contravention Section of 60 of BOFIA as amended.
- ix. The bank contravened the provisions of Section 4.2.2 of Monetary Policy Circular, No37 in the remittance of \$73,100 to Al-Pajeo Ltd on behalf of Pamob Industries Ltd as payment for the installation of glass machine. That was contrary to the regulation, which states that the installation cost of machines should form part of the purchase price.
- x. The bank violated the \$19million maximum limit approved for it by the CBN to open unconfirmed LC for first class customers that were engaged in manufacturing.
- xi. The bank had not reported to CBN, as required by foreign exchange regulations, some of its customers that had failed to submit bills of entry in respect of their imports 90days after importation.
- xii. The bank's Chief Compliance Officer was a Senior Manager contrary to CBN's specification of a rank not below that of a General Manager. In addition, the appointment of the officer was not communicated to the CBN.
- xiii. Credit printout did not meet the requirements of CBN circular No. BED/DO/CIR/VOL.I/II of 20th March 1995. Some vital information such as date granted, expiry date, authorized limit, last movement date and collaterals were not shown in the printout. It was noted that this infraction persisted in the bank.
- xiv. The bank did not comply with the requirements of the CBN circular BSD/PA/4/97 of 12th August 1997 on the Concept, Use and Treatment of BAs and CPs in its treatment of credit exposures amounting to ₦427,337,763 as BAs.

- xv. The bank did not obtain adequate collaterals for its credits contrary to its own credit policy, in contravention of Section 18 and 20(1)(b) of BOFIA, 1991 as amended.

In addition to the foregoing unwholesome practices, the recapitalization process of the bank pre and post acquisition was opaque. The sordid practices are discussed in the section on capital adequacy. Furthermore, in a bid to attain the new capital requirement of ₦25billion stipulated by CBN, the bank sought to raise ₦8 billion through private placement with a view to increasing shareholders fund to between ₦13billion and ₦14billion. At the conclusion of the exercise only ₦747.81million was realized. The management ignored the Board resolution that the private placement proceeds should be remitted to a dedicated account opened with UBA Plc and was unable to account for the bulk of the proceeds collected by the bank. Further elaboration on this issue is made in the section on capital adequacy.

The level of impunity exhibited by the management rendered the Board irrelevant in the governance process of the bank. The duo dissipated the bank's resources to the point that it became insolvent and illiquid. The mess into which they plunged the bank necessitated CBN's intervention. With effect from 1 July 2005, the CBN removed one of the Directors and blacklisted him while another staff was directed to vacate office by resignation. The details of CBN's intervention are provided in the section on regulatory intervention.

Sequel to CBN's directive, two of the Directors exited the bank while a new Director was appointed.

Given the bank's illiquidity, insolvency and inability to raise fresh capital, it was crystal clear that the bank had failed beyond resuscitation. The Board accepted the reality and decided to close the Head Office and branches of the bank. The voluntary closure was followed by a formal handover of the bank to CBN which in turn appointed a three-man Interim Management Board with effect from 1 December, 2005

2.2 Asset Quality

The total assets stood at ₦9.54billion as at 30th April 2003 but declined to ₦8.33billion as at 31st October 2004. The decline was attributable to the write-off of ₦3.5billion classified loans in May 2004 after obtaining CBN approval. However, total asset stood at ₦9.99billion as at 16 January 2006 as shown in the Balance Sheet attached as Table 1. Total credit stood at ₦1.55billion as at 30 April 2003 and increased to ₦6.33billion as at 16 January 2006. Remarkably, the ratio of non-performing credits to total credits stood at 81.38% as at 30th September 2005 which was indicative of a failing bank.

Credit administration in the bank was characterized by unauthorized credits, inactive Board and management credit committees, disregard for canons of prudent lending, concealment of credits and violation of CBN guidelines on treatment of Banker's Acceptance and Commercial Papers. For example as much as ₦427.33 billion credits was repackaged as BAs. The Board virtually abdicated its responsibility in the credit function as many credits above executive management authorized limit were approved and disbursed without recourse to the Board. Meanwhile, the executive management was personified by one of the Directors as the MCC never met within the period that various facilities within and above its limit were granted. In an instance, the executive management which had credit approval limit of ₦30million granted ₦500million BA facility to RCN Networks Limited without Board approval. The same credit equally contravened the single obligor limit since the shareholders' fund of the bank was negative as at the date it was approved.

Even after the attention of the Board was drawn to the malpractice in credit creation at its meeting held on 19 November, 2003 the executive management continued unrestrained in the act. For example, credit of ₦120million was granted to Computer Warehouse Ltd on 30th June, 2004; ₦60million was approved for Bukas Kasmal International Ltd on 15th July, 2004. The Board was made to ratify these credits despite the fact that they were above the limit of the executive management. With the Board's complicity, risk management was non-existent which resulted in a huge quantum of delinquent credits.

Concealment of Credits

The bank's management indulged in credit concealment. For example, N210,150,000 and N130, 858,296 were transferred to the account of SIL number 1110621511 at Ecobank Nigeria Plc through Nigeria Interbank Settlement System (NIBSS) on 5th March and 5th May, 2003 respectively. The total amount of N341,008,296 was round tripped to the account of RCN Networks Ltd number 0011401001097 in the bank from SIL's account in Ecobank Nigeria Plc. The reason for transferring the amount to the account of SIL in Ecobank Nigeria Plc only for the same amount to be credited to RCN Network Ltd account in the bank is difficult to appreciate. Rather than extend credit directly to RCN Networks Ltd, the bank used a third party related to one of the Directors for the purpose. Thus credit of the magnitude to RCN Network Ltd was concealed. What is the relationship between SIL and RCN Networks Ltd? However, RCN Networks Ltd was identified as a major buyer of foreign exchange from the bank.

Meanwhile, the account of RCN Networks Ltd had a nil balance as at 31st October, 2004, but its statement of account on the same date had a debit balance of N500,863.15. However, RCN Networks Ltd was not in the bank's credit schedule as at 31st October, 2004 and the bank attributed that omission to be due to system error. In a similar manner, The Terraces Limited had N1,662,11.10 on 31st October, 2004 as debit balance in its statement of account number 0011401000729 but it was not listed in the credit schedule of the bank on the same date.

In view of the foregoing, the bank not only concealed credit information but also rendered incorrect returns to the Regulatory Authorities as at 31October, 2004. The bank thus breached Sections 24 and 25 of Banks and Other Financial Institutions Act (BOFIA) 1991, as amended.

2.3 CAPITAL ADEQUACY

The maiden audited accounts of the bank post-acquisition showed a negative shareholders fund of ₦3.15billion essentially because deposit for shares valued ₦4.22billion and captured under Other Liabilities had not been capitalized. After the recognition of deposit for shares, shareholders fund

stood at ₦0.05billion as at 30 April 2004. As a result of loan losses shareholders funds plummeted to a negative level to the tune of ₦1.04billion as at 30 September 2005 and further worsened to ₦2.56billion (negative) as at the date of closure on 16 January 2006. As a matter of fact, the bank failed to inject fresh capital of ₦313.83million as directed by CBN in its letter of 1 July 2005. Predictably, the monthly capital adequacy ratio computed by CBN based on the prudential returns submitted by the bank was negative from January 2003 to September 2004 but turned positive in October 2004 at 7.73% which still fell short of minimum ratio of 10%.

The recapitalization was found to be opaque and tainted with fraud. Various observations of CBN and NDIC Examiners pointed to the opacity of the capitalization process. For example, it was noted that one of the Directors divested ₦577million and ₦200million respectively but the total of ₦779million worth of shares was duly verified by CBN as part of the bank's paid-up capital. The amount refunded to the Chairman was used to service outstanding debts that were warehoused in sundry accounts. In the same vein, 21 other investors got ₦511.388million as refund on divestment of shares on various dates. It is believed that the various payments to associated companies for undisclosed services may well be repayment of the loans taken by some principal shareholders for their equity interest in the bank. The surreptitious use of bank's fund to repay credit facilities procured by some shareholders to invest in the bank smacks of fraud. It amounted to dissipation of depositors' funds which contributed to the bank's liquidity problems as well as denied the use of such funds to generate income.

Meanwhile, pursuant to the bank consolidation programme of CBN, the bank undertook a private placement to raise ₦8billion. It offered 10billion ordinary shares at 50kobo each to existing shareholders and 80kobo each to new subscribers. It appointed Messrs Future View Securities Limited and Vetiva Capital Management as Financial Advisers Joint Issuing Houses while the legal firm of Chuma Anosike & Co was appointed solicitor to the offer. At the conclusion of the exercise only ₦747.81 million (or 9.35%) was raised. It is noteworthy that the Board had resolved on 16 November 2004 that UBA Plc be appointed the Receiving Bank to the private placement in order to ensure

that the placement proceeds were well accounted for. It was also resolved that the proceeds account “shall be specified as different and distinct from any other account(s) maintained with United Bank for Africa Plc by Assurance Bank Nigeria Limited and not subject to any right of lien or set-off which United Bank for Africa Plc may have over any amount(s) or any other transaction(s) with Assurance Bank Nigeria Limited”. The signatories to account to be opened comprised the Directors.

Characteristically, the Management ignored the Board resolutions and failed to remit the ₦731,579,000 collected by Assurance Bank to the Receiving Bank. Hence, only ₦16,430,000 received by the two Issuing Houses and UBA Global Markets Limited was remitted to the Receiving Bank. When queried by the Chairman, CBN and the Liquidator, the erstwhile management failed to account for the ₦731.38million received by the bank. The frittering away of the placement proceeds further attested to the financial recklessness of the bank’s management. To date, the innocent subscribers have no hope of retrieving their trapped funds.

2.4 Deposit and Liquidity Profile

The attached Balance Sheet shows that deposit liability which stood at ₦8.47billion as at 30 April 2003 fluctuated to ₦8.13billion, ₦4.21 billion, ₦8.40 billion and ₦7.74 billion as at 30 April 2004, 31 October, 2004, 30 September, 2005 and 16 January 2006 respectively. The loss of 48.22% of deposit liability between April and October 2004 (a period of six months) is indicative of a massive run on the bank while the quantum leap of deposit liability between October 2004 to September 2005 from ₦4.21billion to ₦8.90billion (an increase of 52.70%) is symptomatic of distress borrowing to manage the bank’s liquidity crisis. A clear evidence of illiquidity was the bank’s overdrawn position of ₦0.98billion as at 31 October 2004 with UBA Plc, (its settlement bank). The liquidity crisis did not abate due to a sustained run on the bank. Things got to a head in October 2005 and the Board decided to shut down the Head Office and all the branches of the bank. Thereafter, the bank was voluntarily handed over to the CBN in admission of its failure.

2.5 Earnings Performance

Total income which stood at ₦422.34million as at 31December 2001 grew by 68.23% to ₦710.49million as at 30 April 2003 while total expenditure over the same period grew by 100.24% from ₦833.53 million to ₦1,669.13million (Appendix 2). In the next 12 months ending 30 April, 2004, income increased by 204.94% to ₦2,166.57million while expenditure increased marginally by 6.0% to ₦1,770.47million over the same period. The bank recorded a pre-tax loss of ₦958.64million as at 30 April 2003, but contrived a profit before tax of ₦396.09 million as at 30 April 2004 by not making adequate provision for non-performing credits. Interest on delinquent facilities which should have been suspended was recognized as income. Remarkably, the purported profit of ₦396million as at 30 April 2004 was followed by a write-off of ₦3.51billion non-performing credits in May 2004. Window-dressing of financial statements is indicative of a troubled bank under a desperate management.

3.0 REGULATORY INTERVENTION

It was in response to the foregoing failure triggers that the CBN intervened in July 2005 with a view to halting further deterioration of the bank's precarious condition. On 1st July 2005, the CBN communicated the following measures to the bank for immediate implementation.

- (i) Removal of one of the Directors from office and blacklisting by the CBN.
- (ii) One of the Directors should refund N535,471,581.95 to the bank not later than 4 weeks, failing which, the matter would be reported to the Economic and Financial Crimes Commission (EFCC) for further investigation and possible prosecution.
- (iii) One of the Directors to vacate office by resignation.
- (iv) One of the Directors should be cautioned and henceforth maintain effective oversight function over management.

- (v) A fine of N2million was imposed on the bank for rendering inaccurate and misleading returns to the Regulatory Authorities.
- (vi) A very senior officer should be appointed as Chief Inspector, who should report to the Board Audit Committee.
- (vii) The Board should establish more committees to ensure effective oversight of the bank.
- (viii) The Board should entrench good corporate governance through strict enforcement of its directives and policies of the bank.
- (ix) The bank should offer its divested shares to interested investors.
- (x) The bank should reconcile the list of its shareholders and the appropriate returns filed with the Corporate Affairs Commission (CAC).
- (xi) The bank should disclose the identities of the owners of Tabony Ventures Ltd and Caliphate Ventures Ltd.
- (xii) The bank should refund to CBN \$342,903.50 and \$73,100.00 being illegal income made on foreign exchange dealings
- (xiii) The bank should inject additional capital of N313,828,717 to support its operations.
- (xiv) The bank should discharge outstanding penalties totaling N14,200,000 payable to CBN; and
- (xv) The bank should transfer subscription monies received in respect of its private placement to a designated CBN escrow account.

Sequel to the aforementioned directives and the resignations of two non-Executive Directors the Board was reconstituted and an Executive Director was appointed MD/CEO. Meanwhile, one of the Directors failed to refund N535.47million as directed by CBN. He also failed to refund an additional N204.50million which the bank claimed he misappropriated and demanded from him through its letter dated 15th September 2005. As a matter of fact, he issued a cheque for N204.50million which was returned unpaid due to lack of funds in his account. His action was a violation of the provisions of the Dishonoured Cheques Act.

The bank failed to implement most of the measures contained in the CBN's directives. The fines imposed on it were not paid nor was additional capital

injected. Furthermore, it failed to reconcile the list of its shareholders and file returns at CAC nor did it transfer the private placement proceeds to CBN. The inability of the shareholders and Board to implement CBN's directives attested to the fact that the bank had failed beyond resuscitation.

4.0 CORE REASONS FOR FAILURE

The foregoing review of the bank's performance clearly shows that the core reasons for the bank's failure were endogenous. While the failure is attributable to the collapse of corporate governance, some of the specific issues are discussed below:

- 4.1 The Board abdicated its responsibility to provide focused leadership and strategic direction. It is curious that Board committees were dominated by executive management. The management that should be accountable to the Board operated like a Management Board. The impunity with which Board directives and decisions were violated raised doubt as to whether the Board members really paid for their shareholding. The fact that some Board members benefited from the fraudulent payments approved by one of the Directors through associated companies suggests that the Board was compromised. A Board that compromises itself lacks the moral authority to call the management to order. The consequence was the collapse of corporate governance in the bank.
- 4.2 The antecedent of one of the Directors appointed did not suggest that he was a "fit and proper" person to be saddled with the turn-around of a bank like Assurance Bank. Apart from lacking the requisite skills for a turn-around project, his motive for co-promoting the acquisition was for personal enrichment to the detriment of other stakeholders especially depositors. He merely replicated the fraudulent practices that led to his exit from Citizens Bank at Assurance Bank. His misdeeds attested to the adage that a leopard cannot change its spots. With a docile Board, he had a field day dissipating the bank's resources through huge payments for services not rendered and booking of

credits in a reckless and unprofessional manner which contributed significantly to illiquidity and erosion of capital.

- 4.3 The opaque capitalization pre and post-acquisition of the bank suggests that investors borrowed from other banks to pay for their shareholdings and that after commencement of operations, depositors fund was utilized to redeem the debt obligations of some shareholders. Examples of such payments include payment to Universal Trust Bank (₦57.01million and ₦48.45million) to liquidate the indebtedness of proposed Almond Bank, payment of ₦262.22million to Allstates Trust Bank in March/April 2003 to liquidate the indebtedness of C-Oil Services Limited, a company in which the bank's MD/CEO was a director, payment to Access Bank (₦45million) to liquidate the Bankers Acceptance (BA) facility of Parmex Gensec Consortium Limited, a company related to the bank's Chairman and payments totaling ₦191.72million to Oceanic Bank to liquidate ₦200million BA facility extended to C-Oil Services Limited. Narrations such as "payment for transactions concluded" and "payment for services" were clear evidence of the fraudulent motive behind those transactions. It does appear that the bank was recapitalized through financial engineering. A bank without genuine capital fund like a building erected on quick sand is bound to collapse.
- 4.4 Willful violation of laws, rules and regulations resulted in suspension from the foreign exchange market which contributed to erosion of deposit, illiquidity and loss of valued customers.
- 4.5 Reckless extension of credits by the management resulted in a huge portfolio of non-performing credits which warranted huge provisioning that eroded whatever capital the bank purported it had.

5.0 FAILURE RESOLUTION

As already noted, the Board was overwhelmed by the challenges of successful recapitalization and turn-around of the bank. It therefore decided to voluntarily surrender the bank to CBN in November 2005. Effective 1st

December 2005, CBN appointed an Interim Management Committee (IMC) to superintend over the affairs of the bank. On 16 January 2006 the bank's licence was revoked along with those of 13 other banks that failed to meet the new capital requirement of ₦25billion.

Sequel to the revocation of licence, NDIC filed two separate applications at the Federal High Court to be appointed liquidator and for winding-up the bank. Both applications were granted. Thereafter, NDIC prepared bid information package and offered the bank for acquisition under the Purchase and Assumption (P & A) failure resolution mechanism. At the conclusion of the bidding process, Afribank Nigeria Plc emerged the successful bidder. It acquired the 23 branches of Assurance Bank and ₦5.47billion deposit liabilities belonging to 105,302 customers.

According to the then Director of Afribank Plc, depositors had been paid ₦5.47billion (or 98.76%) as at 28th January 2008. The loan assets that were not acquired were taken over by the liquidator for recovery. According to NDIC 2012 Annual Report, total credits as at date of closure stood at ₦6.369billion out of which only ₦294.75million (or 4.63%) had been recovered as at 31 December 2012. The miniscule level of debt recovery attested to the recklessness and unprofessionalism of the defunct bank's management in credit administration.

In pursuit of accountability and transparency in the management of financial institutions, former Director of the bank was reported to EFCC for further investigation. The anti-graft agency arrested and interrogated him but there is no evidence that he was prosecuted.

6.0 LESSONS LEARNT AND CONCLUSION

The failure of Assurance Bank provides some learning points for policy makers, regulators, shareholders, bank Directors, bank management, and academics. Some of the lessons are highlighted below:

- 6.1 Bank regulators should conduct rigorous due diligence on prospective bank managers in order to ensure that only "fit and proper" persons are appointed into senior management of

banking institutions. One of the Directors antecedent at Citizens Bank suggests that the proposal to appoint him as a Director of Assurance Bank should have been declined by CBN.

- 6.2 The agonies of the investors in the private placement of the bank calls for robust consumer protection. Until the investors could not retrieve the monies subscribed, they were not aware that private placements were not under SEC's regulatory purview. It behoves SEC to educate the investing public on the scope of its mandate. Consumer education should be a vital component of consumer protection.
- 6.3 The inability or failure of a Board of Directors to discharge its fiduciary function through effective oversight of management is a recipe for collapse of corporate governance as happened in Assurance Bank. The management took undue advantage of the Board's docility to dissipate the bank's resources to the benefit of associated companies of one of the Directors in particular through unethical and fraudulent practices. Any bank plundered by its management is bound to fail.
- 6.4 Capital adequacy is critical to a bank's ability to absorb operational losses. The process of capitalizing a bank should be properly scrutinized to ensure that hot money or short-term borrowing is not the source of funding. The capitalization of Assurance Bank was opaque and raised doubt if indeed the purported capital injection was real. The quantum of payments for services without evidence that those services were rendered suggests that those payments were made to liquidate debts contracted for the bank's capitalization.
- 6.5 The acceptance of voluntary surrender of the bank to CBN without making the Board and management to account for their stewardship is a perverse incentive for mismanagement. At a minimum, a status report inclusive of Statement of Affairs as at the date of hand-over should have been submitted, the analysis of which could guide further action the Regulatory Authorities might wish to take against persons that caused the bank's failure.

In conclusion, the failure of Assurance Bank brought to the fore the need to ensure that bank management is not left to charlatans. Only fit and proper persons who will uphold probity and transparency are granted a banking license. Entry through acquisition should be based on track record or demonstrated skill to ensure the viability of the acquired institution. The acquirers of Assurance Bank failed to uphold sound corporate governance principles and entrusted that bank to a Director with unenviable track record but with an agenda to plunder the bank. The bank's resources were dissipated through associated companies and reckless extension of credits. Consequently, the bank was engulfed in liquidity crisis and accumulated losses. The opacity of its capitalization raised doubt as to whether they really had verifiable capital injection. In the circumstance, the bank's inability to survive was predictable.

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