CASE STUDY OF COMMERCE BANK LIMITED

1.0 INTRODUCTION

1.1 Commerce Bank Limited (CBL) was promoted by 25 investors including industry captains, prominent businessmen and professional bankers. CBL was licensed in December 1988 to render commercial banking services and commenced operations on the 23rd of January 1989. Its shareholders were drawn from different parts of Nigeria while no single shareholder held more than 5% equity interest in keeping with the prevailing Government policy

1.2 The bank transformed from a Private Limited Company (LTD) to a Public Limited Liability Company (PLC) in 1991. The number of shareholders increased to 41 private individuals and 43 bank staff (making a total of 84 shareholders). Sequel to its Initial Public Offer (IPO), its paid-up capital increased from ₦38.7 million to ₦54.1 million in compliance with the statutory paid-up capital which had increased to ₦50 million. In 1994, the capital was increased to ₦200 million by way of Rights Issue. The rights issue was fraught with various irregularities which are detailed elsewhere in this study. The exercise lacked transparency as there was no credible evidence of payments for shares allotted to some shareholders. The bank reverted to Private Limited Liability (LTD) status in October 1994 at a time it was engulfed in intractable liquidity crisis and erosion of public confidence.

1.3 The desire of the Executive Management to have unfettered control over the bank's affairs resulted in the Managing Director/Chief Executive Officer transforming into Chairman/Chief Executive in January 1994. That development triggered disharmony on the Board and a crisis of confidence with debilitating consequences for the bank. Indeed, that crisis marked the beginning of the bank's eventual failure.

2.0 JOURNEY TO FAILURE

2.1 Boardroom Crisis

CBL commenced operations with a nine-member Board including the Managing Director/Chief Executive Officer (MD/CEO) and one Executive Director (ED). The Board membership later increased to ten. The Chairman of the Board and some Board members were prominent Nigerians with good track record. The MD/CEO and the ED were professional bankers hence, there was a high expectation of a bank with good corporate governance and ability to offer quality banking services.

The Board constituted a five-member Board Executive Committee comprising the Chairman, MD/CEO and three other Directors with a mandate to act for the Board in-between meetings. The Management on its part established three Committees namely Executive Management Committee, Management Committee and Staff Committee to facilitate effective discharge of its functions. A fourth committee, Loans Committee was later added.

The MD/CEO was re-designated as Vice Chairman/Chief Executive while the ED was re-designated Managing Director. The re-designation was against the backdrop of the bank's status as a Public Limited Liability Company and assumption of the position of President and Chairman of Council of the CIBN.

The bank appeared to be "doing well" in its early years even though Bank Examination Reports issued between 1989 and 1992 noted high risk appetite, submission of inaccurate prudential returns to the regulators and various operational lapses. For example the Loans to Deposit Ratio was as high as 111% as at 31st December 1989. However, early in 1994, a major crisis engulfed the Board which triggered erosion of public confidence in the bank followed by desperate mismanagement. The seed of the crisis was sown at the Board meeting held on 20th January 1994 where another director was elected Chairman to replace the erstwhile Chairman who was not present at that meeting. Three Board members had a strong reservation against one individual occupying the position of Board Chairman and CEO. Hence, the issue was revisited at the Board meetings held on 15th and 24th February 1994. The Board could not resolve the issue by consensus, hence, the matter was put to vote and by a majority of 6:2, the appointment was re-confirmed. The appointment was later ratified at the 1993 Annual General Meeting (AGM) that followed. In reaction, three key Board members resigned from the Board with effect from 28th February 1994. The three Directors issued a press release on 28th February 1994 stating their objection to the vesting of the responsibilities of Chairman and Chief Executive Officer of the bank in a single individual. They contended that "… such arrangement would not best ensure transparency and accountability nor serve the public interest in a bank which has no single shareholder with a large enough holding and professional competence to exercise essential and wholesome control over the Management of its affairs".

The exit of the three Directors dented the reputation of the bank. At the same time, rumours were circulating that the bank was distressed which triggered a deposit run. In order to meet its obligations to depositors, the Management applied to the CBN for a refund of the bank's holding of Stabilization Securities. Its holding of ₦542.6 million as at 31st March 1994 reduced to ₦35.2 million as at 30th June 1995. Furthermore, substantial Foreign Currency Holdings of the bank was repatriated and converted to Naira to meet the bank's domestic obligations. In spite of these measures, the bank's current account with the CBN was heavily overdrawn by the end of 1994. The unmerited CBN overdraft arose largely through abuse of the Clearing and Settlement System by issuance of bankers' payment at its up-country branches. The mobilization of funds using bankers' payment is further discussed elsewhere in this study. At this point, it is significant to note that the desire of the Executive Management to have unfettered control over the bank's affairs contributed to the intractable liquidity crisis which engulfed the bank and from which it never recovered. In a book titled ***"Presumed Guilty"***published in 2000, the exit of the three DirectorsDirectors was regarded as a remote cause and it listed huge exposure to Ile Oluji Cocoa

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Processing Company Limited, trade finance fiasco (the Rice Project) and suspension from the Autonomous Foreign Exchange Market (AFEM) and its attendant adverse publicity as the immediate causes of the bank's illiquidity. These issues are further discussed elsewhere in this study.

2.2 1994 Rights Issues

Having taken full control, the Executive Management engaged in unwholesome practices thus vindicating the three Directors that resigned in protest against vesting the functions of Chairman and Chief Executive in a single individual. The handling of the 1994 Rights Issue bore testimony to the fears of the three Directors that resigned. The Special Examination of the bank conducted as at 31st December 1995 noted irregularities in the payment for shares which include the following:

(i) A ₦20 million cheque deposited to cover 8 million units of shares was not presented for payment

(ii) A Cheque for ₦24,800,765 and bank draft for ₦10 million were utilized to pay for shares allotted to 9 persons

There was no justification for utilization of funds that originated from one company to pay for shares allotted to persons who are not members of the same company.

A Director listed a company as one of the existing shareholders of the bank but described the same company as an official bank account created for trading in unofficially sourced Foreign Exchange. This explanation calls to question, the transparency of the bank's ownership structure. This lack of transparency also featured in other aspects of the bank's operations as would be discussed below:

2.3 The Trade Finance Fiasco (Rice Project)

In 1993 a Director of the bank who had major stakes in another company introduced the Chairman of the company to the bank. The Chairman of the said company had an import license to import 30,000 metric tons of parboiled rice duty free. The bank agreed to finance the rice importation subject to profit-sharing ratio of 50:50. An account was opened for the company to receive the rice proceeds. The project was to be executed in three tranches. A letter of credit was opened for the importation of 12,000 metric tons as the first tranche in August 1993. The ship that brought the consignment arrived Apapa port on 5th October 1993 from Thailand. A major huddle arose in the process of clearing the consignment. The custom officials insisted that applicable duties and charges must be paid before off- loading the consignment. While the bank was making efforts (including litigation) to ensure that custom duties and charges were not paid the ship was incurring demurrage at the rate of $5500 per day. As at 8th November, the ship owners had filed a claim for $165,000 as demurrage. The bank was made to pay Import Duty before clearing the consignment. It also incurred legal and public relations expenses

At the conclusion of the transaction, the bank incurred a loss of ₦114 million. The Examination conducted as at 31st December 1995, revealed that prior to the conclusion of the transaction, the bank had taken a profit of ₦40 million up front to boost its operating profit for the year 1993 from which it paid dividends. The loss of ₦114 million was put in a Suspense Account in 1994 rather than apply it to the 1994 operating results. Even though one of the Directors admitted in a separate publication titled "Presumed Guilty" that the bank made a huge loss the Management chose to window-dress the bank's financial statement.

There were other commodity trading transactions such as sugar projects from which the bank sustained losses. Bank Examiners estimated all the losses incurred to be in the region of ₦154.3 million which was not reflected in the bank's Audited Financial Statements. In conclusion, neither the 1993 nor the 1994 audited accounts of the bank reflected its true financial condition.

2.4 X Ventures Nigeria Limited

According to the Directors, Y International) was the precursor to X Ventures Nigeria Limited (XVNL). XVNL was opened when Y account was closed "The accounts were created by the bank to facilitate its Foreign Exchange trading activities in respect of unofficially sourced Foreign Exchange called Autonomous Funds" "(page 154 Presumed Guilty). The Special Examination conducted revealed that "the bank transferred several millions of US dollars from its official accounts and other sources…and sold same to sundry customers at parallel market rates". The report further noted that even though "Exchange Rate was officially fixed at ₦22 to the US dollar, the bank sold at between ₦52 and ₦103 to the dollar".

In another transaction involving purchase of $1 million from a customer in November 1994, the bank paid the customer ₦100 million and transferred $1 million to X Ventures account at American Express Bank (AMEX) London without corresponding debit to X's Naira account. Examiners' review of XVNL's Naira Mirror Account revealed a debit balance of ₦460 million as at 4th March 1996 which was warehoused in Other Asset Account even though the dollar account had been closed after a cheque of $16.00 had been issued in favour of the bank. Effort to reconstruct X's Naira account revealed that several expense items amounting to ₦115.25 million were charged into the account. Such items include money spent for public relations, interest expenses and brokerages. There were several other unexplainable transactions financed by XVNL account. In effect, the debit balance of ₦460 million constituted a loss to the bank.

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2.5 ABC FUND

In June 1994, A Federal Ministry Department $ 7 million soft loan through the CBN made up of $3 million for on-lending to Cocoa Producers Association of Nigeria (CAN) and $4 million for on-lending to the Cocoa Producers Association of Nigeria COPAN. The facilities were guaranteed by Commerce Bank before the CBN credited its account with American Express Bank (AMEX) London.

On 1st July 1994, based on the Managing Director's recommendation, tthe transfer of the $7 million was approved to X Ventures' Account No 136298 with AMEX. Between 6th and 21st July 1994, a total amount of $4.975 million was transferred into that account in two tranches of $2.575 million and $2.40 million. From the remaining balance out of the $7.0 million the bank utilized $2 million for its trading and joint venture importation and sale of commodities like rice and sugar.

NDIC Examination report noted that the sum of $1.8 million was transferred to the account of C Commodities Limited at Barclays Bank Plc Gibraltar in two tranches of $1.2 million on 6th July 1994 and $600,000 on 23rd August 1994. The Examiners were unable to establish the purpose of the transfer. But one of the Directors in defence of the bank, explained that the transfer was part of ICPCL's outstanding allocation and that C Commodities is a sister company of ICPCL owned by Mr. & Mrs D. He further explained that Mr. D denied receipt of the transfer of funds but he eventually admitted receipt after investigation by Nigeria Police team headed by one ACP and thereafter absconded. He further claimed that COPAN's fund were fully disbursed and quoted a CBN report dated 4th August 1997 which concluded that "COPAN accounts were properly maintained and were in line with mandate. As at the time of this investigation there was an unutilized balance of $831325.97. From the documents and records available to us, this represents the correct balance"

One of the Directors of the bank, however failed to justify why $7 million from CBN was transferred to the account of X Ventures which the bank created to facilitate trading in unofficially sourced Foreign Exchange. NDIC Examiners confirmed that part of the funds were sold at the illegal parallel market at between ₦52 and ₦103 to $1.0 at the time Exchange Rate was officially fixed at ₦22 to $1.0. As will be shown below, the disbursement to ICPCL crystalized into a loss to the bank and contributed to its illiquidity

2.6 Ile Oluji Cocoa Processing Company Limited (ICPCL) Exposure

According to one of the DirectorsDirectors of the bank, in mid-1994, the Nigeria Export-Import Bank (NEXIM) provided ICPCL with ₦200 million facility as working capital for stock-piling raw cocoa for processing and export. The facility was guaranteed by Commerce Bank. In addition; out of the $4 million COPAN fund mentioned in section 2.5 above, a total of $3.094 million was allocated to ICPCL. This disproportionate share of ICPCL sparked a row amongst BPAN members. In the heat of the crisis, as the President of COPAN resigned in April 1995. Meanwhile, Commerce Bank had disbursed the naira equivalent of $1.086 million and $1.8 million (that is $2.886 million) to ICPCL.

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ICPCL stopped repatriating its export proceeds to service the NEXIM facility through CBL. When NEXIM facility fell due, CBN debited the bank's current account with ₦200 million which the bank had no fund to absorb. Also, the bank had no fund to cover its bids at the Autonomous Foreign Exchange Market (AFEM) introduced at the beginning of 1995. The bank was suspended from the AFEM. The suspension generated adverse publicity which precipitated a massive run on the bank's deposits (Adekanye F.A.Z. (2000) P 45)

Faced with diversion of export proceeds by ICPCL and intractable liquidity problem, the bank decided to exercise its right under its deed of Debenture and on 17thMay 1995 appointed Receiver/Manager for ICPCL. The United Bank for Africa also appointed as the same person as Receiver/Manager for ICPCL. The appointment of the Receiver/Manager was challenged by ICPCL in court and was not finally resolved until December 1995 by both the Federal High Court and the Court of Appeal. Unfortunately, the Receiver/Manager failed to pursue the interest of his principals (Commerce Bank and United Bank for Africa Plc). He incorporated a new company, Ile Oluji Cocoa Mills (ICOMILLS) and transferred the assets of ICPCL to that company without the consent of his principals. He also failed to render account of his stewardship. He made an unsuccessful attempt to acquire ICPCL. Before the termination of his receivership, he paid a paltry sum of ₦10 million to UBA Plc and ₦8 million to Commerce Bank.

Even though one of the Directors of the bank admitted that the bank's exposure to ICPCL was huge, they were not classified as loans and advances. At a meeting between the Board of the bank and CBN/NDIC Executive Committee on Problem Banks held on 10th January 1996, one of the Directors of the bank confirmed that Export Support Loans were classified as "other assets" and that they would be included in Loans and Advances starting with the reporting month of December 1995. In effect, the bank had been understating its loan portfolio, had not been making adequate provision for loan losses thereby declaring paper profit.

2.7 Commercial Enterprises

Rather than address the fundamental causes of the bank's precarious financial condition, the Management resorted to concealing the key indicators of its problems. In this regard, the Management opted to conceal a significant portion of its loan book by creating a secret account tagged "Commercial Enterprises". Many unauthorized or non-performing credits were warehoused in the account. Consequently, the quantum of credits reported to CBN and NDIC in the bank's monthly reports was grossly understated. When the true position was unveiled, the credit portfolio increased from ₦1.096 billion in November 1995 to ₦2.506 billion (129%) in December 1995. It is noteworthy that as at the time of filing December 1995 returns to CBN and NDIC, two Directors of the bank were in Police custody.

3.0 APPRAISAL OF THE BANK'S PERFORMANCE

The following sub-sections attempts to establish beyond any doubt that the bank's financial statements did not reflect its true financial condition. They were deliberately manipulated to hide the bank's operational performance, profitability and its inability to survive as a going concern. Hence the financial statements are neither reliable nor useful for assessing the bank's performance. We would therefore analyse the bank's condition based on the CAMEL parameters. The components of this acronym are Capital Adequacy, Asset Quality, Management, Earnings and Liquidity. The appraisal is largely based on information from various Bank Examination Reports and other relevant documents.

3.1 Capital Adequacy

The focus on capital is not on its quantum alone but its adequacy or otherwise to support the volume and character of a bank's business. Bank regulators require that capital should grow in tandem with risk assets. From 1989 to 1994 the bank met the prescribed regulatory benchmark of Adjusted Capital to Net Credit of 1:10 and Capital to Risk Weighted Asset Ratio (CAR) of 8% based on its window-dressed financial statements.

An indicator of the bank's weak capital position was its decision to revert from a Public Limited Liability Company (PLC) to a private limited liability company in order to enable it raise additional capital of ₦100 million through a Rights Issue in 1994. The lack of transparency of the payment for rights issue was discussed in Section 2.2 above. The bank also embarked on a restructuring process with effect from 28th October 1994. The strategy adopted includes cost-reduction. Consequently, a downward reduction of staff benefits was effected, medical and legal fees were rationalized while the pool of drivers numbering 95 were rationalized and transferred to a labour contractor. These cosmetic measures did not ameliorate the Capital Inadequacy. By June 30, 1995 the bank's Capital Adequacy Ratio (CAR) fell to 1.37% as against the Minimum Regulatory Requirement of 8%. As at 31st December 1995, when most of the losses concealed were brought into the financial statements, the bank's capital had been completely eroded while the CAR was negative to the tune of 111.54%. The bank was adjudged to be insolvent and minimum fresh capital injection of ₦2.7 billion was recommended.

3.2 Asset Quality

The bank had no Asset and Liability Management Committee while it failed to adhere to sound Risk Management principles. For example, the Inspection Department discontinued the review of credits with effect from November 1994 when that function became the exclusive preserve of the Risk Management Department. Meanwhile, the Risk Management Department charged with credit administration had no direct access to Debtor Customers Accounts. It relied on Credit Reports sent from the various branches.

Credit administration in the bank featured connected lending, insider abuse, concentration of credit in a few obligors, unauthorized lending, credits in excess of approved limit, credits in excess of statutory lending limit (Single Obligor Limit) indiscriminate granting of interest waivers, inadequately secured as well as unsecured credits. The combined effect of these weaknesses was a large portfolio of non-performing credits. The Special Examination conducted as at 31st December 1995 put non-performing credits at 65% of total credits.

The Credit Portfolio was grossly understated through the use of Suspense Accounts. The credit portfolio which the bank reported to be ₦944 million as at June 30th 1995 rose to ₦3.15 billion by 31st December 1995 after most of the concealed and unreported credits were brought into the books. For example Commercial Papers worth ₦252 million were excluded from the Credit Portfolio. Several credit exposures were concealed in the account tagged "Commercial Enterprises" discussed in section 2.7 above.

As at early 1996, substantial portion of the bank's exposure was concentrated on five delinquent borrowers amounting to (1356 million. The concentration also relates to export and commodity financing. These facilities also exceeded the bank's Single Obligor Limit.

Insider-related transactions were not conducted at arms-length. There were clear cases of insider abuse. Examples cited by Bank Examiners included assignment of a parcel of land worth ₦21 million in full and final settlement of debt of ₦37 million owed by, a company jointly owned by some Directors of the and acceptance of half an acre of land at Sango Otta and some obsolete printing machines in satisfaction of debt owed by, a company owned by a Director and his spouse. Director related credits were estimated at ₦567.6 million as at 31st December 1995.

On the basis of the Prudential Guidelines, the bank was required to make a provision of ₦1.85 billion for its non-performing credits and another provision of ₦806.9 million for other known losses whereas the bank had only made a paltry provision of ₦212.84 million based on its window-dressed Credit Portfolio.

3.3 Management

Upon the exit of the three Directors who objected to combining the position of Chairman and that of Chief Executive Officer (executive duality) in a single individual, the Executive Management comprising the CCEO and the Managing Director took full control of the affairs of the bank. The Board was rendered ineffective if not irrelevant as major decisions were taken either without reference to the Board or on the presumption that the Board would ratify such decisions. Corporate governance was at a low ebb. Bank Examiners noted that the bank had no strategic plan and that the Managements actions were at variance with the bank's mission statement which sought to focus on articulate corporate and individual clients. Also, there were no guiding corporate values nor were lines of responsibilities and accountability respected. The Examiners noted that leadership was personalized while there was limited empowerment of Senior Management staff. In summary, unfettered power was concentrated on the office of the CCEO.

A review of the bank's affairs reflect a Management with high risk appetite underpinned by conflict of interest and lack of capacity to manage risks. It is noteworthy that most of the troubled risk assets of the bank are insider-related. The rice project that resulted in a huge loss was introduced by a bank Director while one of the Directors was up to 1993 the Chairman of ICPCL which became the bank's albatross. The Management paraded the bank as an award winner in Export Finance but failed to ensure adequate protection of its exposure to that sub-sector. ICPCL was able to divert export proceeds away from the bank and stopped patronizing the bank. Also, the Receiver/Manager of ICPCL was appointed "because he was well known" to the Executive Management rather than on the basis of his track record in receivership.

The Management exhibited lack of transparency and accountability in conducting the affairs of the bank. The reports of financial condition being submitted to the Regulatory Authorities were manipulated to portray sound and profitable operations from 1989 to 1994. The Management of the Bank failed to make adequate provisions for loan losses while losses were concealed in Special Purpose Vehicles such as Commercial Enterprises. During an era of dual exchange rate, Foreign Exchange from official sources were transferred to secret accounts and sold in the parallel market. In the face of a run on the bank's deposit, the Management resorted to kiting with bankers' payment to mobilize funds from up-country branches of the bank. The kiting scheme resulted in a huge overdraft at the CBN which led to the bank's suspension from the Cleaning House.

While the Executive Management was in control, it was difficult to determine the true financial condition of the bank. Even the Board was kept in the dark. For instance, Examiners noted that several credits in excess of Management's approval limits were unknown to the Board. They further noted that the bank's credit exposures to some companies were not approved by the Board while the huge exposure to ICPCL was only disclosed to the Board at a meeting held in July 1995 after the crisis in the bank had assumed an alarming dimension. It was most worrisome that the manipulation of records and suppression of information on the true financial position was a willful act of the Management. Otherwise, the Directors, would not have regarded the unveiling of the true position of the bank after the arrest of some of them Directors by the Nigeria

Police, as an act of betrayal. He indicted Commerce Bank staff for collaborating with NDIC Examiners. According to one of them "Little did they know that by collaborating with the NDIC, they were unwittingly digging their own graves! They led the NDIC Examiners into all the secrets (sic) archives of the bank and made them look like superstars"(Adekanye, F.A.Z. (2000) p 126)

Rather than live up to their responsibilities of safeguarding the bank's assets, the Management of the bank engaged in dissipating such assets through misapplication of depositors' funds. Depositors' fund was utilized for fixed assets acquisition. They used over-valued properties to liquidate debts owed by their companies. Spurious expenditures were incurred purportedly on "public relations" as evidenced by the sum of ₦12.27 million utilized for the release of Stabilization Securities by the CBN. An investigation by NDIC revealed that on 19/9/94, the bank issued a Certified Draft for ₦12,272,979 which was said to be for public relations relating to the release of its Stabilization Securities by the CBN. That cheque, issued in the name of a company, was paid into one of the Directors Current Account with the United Bank for Africa, University of Lagos Branch on 20/9/94. The proceed was immediately taken out via a UBA draft in the name of P.M. Resources Limited, Lagos. That draft was paid into an account at the Broad Street Branch of Savannah Bank in favour of P.M. Resources Limited – a company owned by one of the Directors and his spouse… It should be noted that that payment was funded from the X Ventures Naira account. Other dissipation of funds include funds withdrawn from Surulere branch to source deposit which never materialized from the Petroleum Trust Fund to mobilize deposit from Flour Mills of Nigeria which did not materialize. Furthermore, there were instances when Foreign Exchange was sold to customers at rates below the bank's buying rates. Given the litany of malpractices, the viability and survival of the bank was in jeopardy.

3.4 Earnings (Income and Expenditure)

The bank's published Audited Financial Statements from 1989-1994 showed that it operated profitably. Its profits after tax for those years were ₦3.6 million, ₦12.2 million, ₦30.1 million, ₦36.4 million, ₦58.8 million and ₦90.0 million respectively while the bank paid dividends in each of those years. As already shown in the foregoing sections, the bank's Financial Statements had been subjected to manipulations and window-dressing. Therefore; they could not be relied upon in assessing the bank's performance.

Examiners identified several irregularities in the course of Special Examination of the bank as at 31st December 1995. These include:

i) A loss of ₦11.4 million from Foreign Exchange trading incurred in 1992 was scheduled for gradual amortization which was concluded in October 1995
ii) A Foreign Exchange loss of ₦17.1 million in 1993 was approved for write-off over a period of six months in July 1995
iii) The loss of ₦114 million on rice project in 1993/94 was not reflected in the accounts for that financial year
iv) Several expenses items in excess of ₦115 million were suppressed in X Ventures Nigeria Limited, a secret account
v) An arbitrary monthly levy of 1.6% flat over and above the 21% maximum lending rate stipulated in 1995 was debited to borrowing customers. It was tagged "memo debit" and applied at the middle of the month on outstanding debit balances.

The above malpractices reflect the desperate effort of the bank's Management to generate income with a view to declaring profit. But such efforts were not sufficient to reverse the bank's illiquidity and insolvency.

3.5 Liquidity

Based on its manipulated prudential returns submitted to the CBN, the bank met the Prescribed Liquidity Ratio several times up to June 1995. However, in October 1994 it recorded a ratio of 0.83% against the prescribed ratio of 30% for that year. Meanwhile, it should be noted that the liquidity ratio computations did not take into account the overdrawn balances at the CBN which would have materially affected the computations. For example, the bank recorded a Liquidity Ratio of 48% in May 1994 when its current account with CBN was overdrawn to the tune of ₦179.1 million.

The Board-room crisis that led to the resignation of three Directors in February 1994 marked a turning point in the life of the bank. From April 1994, the bank started recording adverse clearing positions which resulted in overdrawn position on its current account with the Central Bank. The bank's CBN account was consistently overdrawn from April to November 1994. Apart from a credit balance of ₦38.3 million in March 1995, the account was persistently overdrawn in 1995 and peaked at ₦1.24billion in November of that year. Persistent adverse clearing position is a clear evidence of deposit run.

Faced with deposit run, the bank in 1994 resorted to abuse of Bankers' Payment to mobilize funds to meet its maturing obligations to depositors. The scheme involved issuance of Bankers' Payments to various commercial banks (especially up-country branches) in exchange for drafts drawn on such bank's Lagos and Ibadan branches. Thereafter, those drafts were either taken to CBN Lagos to boost the bank's current account balances or presented at other banks to obtain funds to support the bank's operations. Meanwhile, subsequent presentation of the Bankers Payment issued by Commerce Bank at the various up-country

CBN Clearing Houses resulted in overdrafts at CBN branches. Such debit balances were transferred to CBN Lagos and further increased the overdrawn position of the bank's current account at CBN Lagos. NDIC Examiners estimated that the bank issued Bankers Payment in excess of

₦1.7billion between 1994 and 1995. The Examiners attributed the bank's huge overdrawn position at CBN to kiting with Bankers' Payment.

The bank also applied to CBN for a refund of its holding of Stabilization Securities to ameliorate its liquidity crisis. As a result its holding which stood at ₦542.6 million in March 1994 reduced to ₦35.2 million in June 1995. In spite of all these efforts, the bank's illiquidity persisted. Early in 1995, the bank had no funds to take up its bid at the AFEM and was suspended in February from further bidding for Foreign Exchange. The suspension exacerbated its liquidity problem as customers who needed Foreign Exchange moved to other banks. Due to persistent overdrawn position of its Current Account with CBN the bank was suspended from clearing on November 10, 1995 and never returned to clearing. In a system where all commercial banks are clearing banks, any commercial bank that had no access to the clearing system stood no chance of survival. The bank's overdrawn position with CBN as at 16th January 1998 when its license was revoked stood at ₦1.38billion

4.0 CAUSES OF COMMERCE BANK'S FAILURE

According to CBN/NDIC collaborative study (1995), the causes of bank distress that could result in failure include; inability to meet capitalization requirements, mismanagement, weak deposit base, and large portfolio of non-performing loans. All these factors featured in Commerce Bank's case. The Board-room crisis of early 1994, absence of risk Management and self-dealing also contributed to the failure of Commerce Bank. We shall subsume the causal factors for the failure of Commerce Bank under four broad issues viz: founder syndrome, weak corporate governance, Management ineptitude and financial engineering. These factors are discussed below:

4.1 Founder Syndrome

One of the Directors saw the bank as his brain child. According to him he conceived the idea of establishing the bank and invited some friends to invest as co-founders. He further claimed that "about three quarters of the top Management staff of Commerce Bank i.e Assistant General Manager to General Manager were, ex-Savannah Bank's staff who were invited by me to join me in setting up Commercial Bank" With the mindset of a founder he sought to play a dominant role in running the affairs of the bank. It was this desire that eventually led to his emergence as Chairman/Chief Executive Officer (CCEO). That major change in the Board structure caused the resignation of the erstwhile Chairman and two Directors. Upon their resignations from the Board, the three Board members issued a press release to explain the circumstance that led to their exit. Without any doubt, the publicity that accompanied the exit of the three Directors dented the bank's image and induced a run on the bank's deposits.

With the exit of the three Directors, the remaining Directors took full control of the decision-making process and showed little or no regard for transparency and accountability. This was aptly displayed in the rights issue of 1994 whereby with their approval purported funds were moved from customers' unfunded accounts, transferred to other accounts and utilized to pay for shares allotted to some shareholders. The payments for the Rights Issue were substantially funded with the bank's deposits without consideration for the negative impact on liquidity. With the manipulated rights issue, the voting rights of some Directors of the bank increased significantly and consolidated their strong hold on the bank. This stronghold provided the platform for the various unethical practices which resulted in avoidable losses by the bank.

4.2 Weak Corporate Governance

Prior to the adoption of Chairman/ Chief Executive nomenclature, the Board appeared to enjoy balance of power. Both the Board and the Board Executive Committee were chaired by a Director who was independent of Management. The separation of Board and Management functions allows for checks and balances. The fusion of Board and

Management functions by the emergence of the CCEO rendered the Board ineffective if not irrelevant. The concentration of power was thoroughly abused as major decisions such as big ticket credit approvals and issuance of guarantees were effected without the Board's approval. When such matters got to the Board, they were *fait accompli*. Most of the troubled assets of the bank with dire consequences were created without the Board's approval.

4.3 Management Ineptitude

The Executive Management of the bank comprised the CCEO and the Managing Director. The Senior Management spanning Assistant General Managers to General Managers had little input into the decision-making process. Examiners noted evidences of Management bye-pass whereby some subordinate officers knew more about transactions than their heads of division as well as evidence of factionalisation of the workforce. Such a work environment typically breeds discontent and indiscipline. Bank Examiners noted various acts of indiscipline in the bank. For example, a ₦2 million loan request by a food company was turned down by the Head Office but disbursed by Ikeja branch. Abuse of executive accounts was also cited. The Managing Director and several staff overdrew their executive accounts and later transferred the debits to their Executive Housing Loan accounts.

Rather than focus on the mission statement to serve articulate individuals and corporate clients, the Management engaged in Foreign Exchange and commodity trading. Most of those transactions resulted in huge losses which eroded the bank's capital. Rather than recognize the losses in the Financial Statements, they were warehoused in suspense and or secret accounts. Also, delinquent credit facilities were deliberately concealed in secret accounts. After the control of the Executive Management was terminated by their arrest by the police, the cooperation extended by staff to NDIC Examiners to expose concealed losses and delinquent credit facilities was considered an act of betrayal.

Furthermore, faced with liquidity problems in 1994 the Management undertook a cosmetic restructuring. Apart from reduction of staff benefits and rationalization of drivers, the problem of large portfolio of delinquent credits was not addressed while abuse of clearing system was adopted as a strategy for containing deposit run. It was the Bankers' Payment scam that led to persistent and increasing overdrawn position at the CBN which resulted in the bank's exclusion from the clearing system. That was the death knell of the bank.

The Management of the Bank failed to appreciate the critical role of Risk Management in banking. There was no evidence of measures adopted to address the risks inherent in the NEXIM facility of ₦200 million it guaranteed or rice importation under the Joint-Venture |Projects. The Management focused more on realisable income in the belief that nothing would go wrong. The chain of losses incurred and the concealment of same is a sad commentary on the managerial ability of the some of the Directors of the bank who were professional bankers.

4.4 Financial Engineering

Pursuant to their lack of interest in transparency and accountability, the Management of the Bank engaged in all kinds of gimmicks to portray the bank as a profitable going concern. These include reverting from a public to a private company, change of financial year end and concealment of the true indicators of the bank's financial condition as detailed in section 3 above. The Examiners are of the view that the unreliability of the bank's Financial Statements contributed to the withdrawal of expression of interest by Intercontinental Merchant Bank that wanted to acquire equity interest to facilitate the bank's turn-around.

The manipulation of accounting records could not and did not address the bank's illiquidity and insolvency. It was a matter of time for the bubble to burst and it did burst for the bank. Hence, it ended up in liquidation.

5.0 REGULATORY INTERVENTION

Given the deteriorating condition of the bank, regulatory intervention became inevitable.

5.1 Imposition of Holding Action

With its unabating liquidity crisis and insolvency the CBN/NDIC Executive Committee on Problem Banks invited the Board of the bank for a meeting to deliberate on the precarious condition of the bank. At the meeting which took place on 10th January 1996, one of DirectorsDirectors presented measures being taken to salvage the bank and requested that the CBN overdraft be converted to a Term Loan and that the bank be re-admitted to the Clearing House subject to depositing ₦500 million with CBN. The bank's submission was considered unsatisfactory. Hence, Holding Action was imposed on the bank specifying measures to be implemented over a period of 6 months. The measures include:

- Presenting an acceptable repayment proposal on CBN overdraft
- Embarking on aggressive debt recovery
- Placing embargo on new credits
- Placing embargo on capital projects
- Placing embargo on acquisition of fixed assets
- Rationalization of staff

However, on 1st February 1996, two of the banks DirectorsDirectors were arrested by the Nigeria Police over allegations of siphoning the bank's fund abroad. One of the General Managers in the bank was appointed to act as Chief Executive Officer. The Management's effort did not improve the bank's precarious condition. Hence, further action was taken.

5.2 Dissolution of Bank's Board.

In September 1996, the Board of the bank was dissolved and replaced by a Transitional Supervisory Board (TSB) comprising CBN/NDIC staff and a Managing Director and Executive Director from the banking industry. TSB's mandate includes determining the bank's financial condition, safeguarding its assets, debt recovery and recommending appropriate resolution option. Given the loss of public confidence in the bank and Government policy that public funds should not be used to bail out banks, the impact of TSB's effort was minimal.

In September 1997 the CBN decided to handover the affairs of distressed banks to NDIC. The TSB was dissolved and was replaced by Management Supervisory Board (MSB) constituted by officers from the NDIC. The MSB's tenure was short-lived (barely four months). On 16th January 1998, the banking license of Commerce Bank was revoked along with those of 25 other banks pursuant to the Federal Government's determination to end the lingering distress in the banking system.

5.3 Liquidation

Pursuant to the revocation of the bank's license, NDIC was appointed Liquidator. As Liquidator, NDIC effected payment of insured deposit from its Deposit Insurance Fund (DIF). Thereafter, it embarked on debt recovery and disposal of the bank's fixed assets and chattels. As at 31st December 2011, recoveries by NDIC were as follows (NDIC 2011 Annual Report)

Debt recovery	-	*₦278.69m*
Disposal of fixed assets/chattels	-	*₦197.93m*

The funds realized were applied as follows:

Payment of insured deposit	-	*₦109.73m*
Payment of uninsured deposit	-	*₦330.94m*

As at 31st December 2011, Total Dividends declared in favour of uninsured depositors amounted to 70.76% which implies that 29.24% uninsured deposits are still outstanding after about 14 years since the commencement of liquidation processes. The situation is attributable to the reckless manner Risk Assets were created which made debt recovery a daunting challenge.

6.0 PROSECUTION FOR WRONGDOING

Two Directors of the bank were arrested by the Police on 1st February 1996 for alleged siphoning of the bank's fund abroad. They remained in police custody and on 15 January 1998 were arraigned along before the Failed Banks Tribunal on a 51-count Charge involving the sum of $4,448,463.36 and ₦333,096,366.84. Without going into too much details, A cursory review of the Charges indicates some duplication. Count I relates to stealing $1,800,000,Count 2 relates to remitting $1,800,000 to C Commodities Limited while Count 3 relates to stealing $6,999,980. The figure in Count 3 is the $7,000,000 CAN-COPAN Fund discussed in section 2.5 above less $20.00 bank charge. In the context of analysis in section 2.5, it would appear that the drafters of the charges did not fully understand what actually transpired. Given that the sum of $1,800,000 in Count 1 is a component of the sum in Count 3, the impression created is that that amount was stolen twice.

The trial was protracted and not concluded until the Failed Banks Tribunals were dissolved by Decree No 62 of 28th May 1999 and the cases before them were transferred to the Federal High Court

7.0 LESSONS LEARNT

A number of lessons can be distilled from this case. Some of these are listed hereunder.

7.1 Balance of power with in-built mechanism for checks and balances at the Board level is a necessary condition for good corporate governance Balance of power entails clear delineation of responsibilities of the Board and Management and allows for effective Board oversight. Undue concentration of power in a single individual can be abused and this was done in Commerce Bank after the CEO also became the Chairman of the

Board. In recognition of the susceptibility of Executive duality to abuses, the CBN in its Code of Corporate Governance issued in 2006 disallowed any bank Chief Executive from also serving as the Chairman of the Board.

7.2 Public disclosure of serious problems or crisis in a bank can cause sudden liquidity crisis. The Boardroom crisis of early 1994, the press release by the three aggrieved Directors that exited the bank and the bank's suspension from AFEM induced a loss of public confidence followed by a run on deposit. Those events marked a turning point for Commerce Bank and it did not recover from the liquidity crisis that ensued.

7.3 Excessive risk–taking without appropriate framework for Risk Management can lead to losses that will erode a bank's capital and trigger liquidity problems. The various Joint-Venture Projects (especially rice and sugar) undertaken by Management, Foreign Exchange trading and concentration of credit eroded the bank's capital and created irreversible liquidity crisis that caused its failure.

7.4 Unmerited regulatory forbearance can provide opportunity for abusive practices. Commerce Bank Limited was kept in the Clearing System in spite of its persistent adverse clearing positions for close to two years. The bank took advantage of that situation by engaging in a Bankers Payment scam and indeed turned the CBN to a lender of first resort. The bankers' payment scam endured for so long because of CBN's inability to consolidate bank's clearing position on daily basis. Given the widespread abuse of Clearing System the CBN subsequently took measures to plug the loophole.

7.5 The enforcement regime which targets sanctions at institutions alone is inadequate. If the Management staff that superintended over unethical practices are promptly disciplined or removed from office, a strong signal would have been sent to the industry and corporate governance would have been enhanced.

7.6 Multiple Charges while prosecuting wrongdoing can hinder successful prosecution. Multiple Charges harbor the risks of duplication of Charges or contradictory Charges especially where commission of criminal offences must be proved beyond reasonable doubt. It is equally imperative that Prosecutors must interact effectively with the Regulators before drafting Charges.

8.0 CONCLUSION

Commerce Bank Limited entered the market with a lot of goodwill based on the pedigree of its Directors and the public perception of its Management unfortunately, the desire of Management to have a strong hold over the bank generated a chain of events that led to intractable liquidity crisis, insolvency and eventually the failure of the bank. This case study should be instructive to bank Management especially those of banks that are owner-managed Board members too should appreciate that failure to exercise their oversight function can only put their bank in jeopardy. This case also underscores the need for bank regulators to effect prompt corrective action. Delayed intervention would only compound liquidity and insolvency problems.

REFERENCES

Adekanye, F.A.Z (2000)	Presumed Guilty
CBN (1990)	Routine Examination of Commerce Bank Limited As at 31st December, 1989
CBN (1993)	Routine Examination of Commerce Bank Plc As at 31st December 1992
CBN (1994)	Routine Examination of Commerce Bank Plc as at 31st March 1994
CBN (1996)	Target Examination of Commerce Bank Plc As at 30thJune 1995
CBN/NDIC (1995)	Distress in the Nigerian Financial Services Industry- A CBN/NDIC Collaborative Study
NDIC (1996)	Special Examination Report of Commerce Bank Limited as at 31st December 1995
NDIC (2012)	2011 Annual Report & Statement of Accounts

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