

Ethiopia: Abiy Ahmed's big gamble **South Sudan: Another chance at peace**

The pan-African magazine of choice

Africawatch



Ghana

Travesty of justice

**How dirty politics
killed uniBank to
bring Kwabena
Duffuor down**

Ken Ofori-Atta

**Ghana's economic
'magician' who got
away with fraud**

**Coronavirus
pandemic**

Africa takes a hit

JUNE/JULY 2020



United States: \$6.00 ● Canada: C\$6.50 ● UK: £5.00 ● Euro Zone: €5.50 ● South Africa: R50.00 ● Nigeria: N1000 ● Ethiopia: Br100.0 ● Kenya: KShs350 ● Ghana: GH¢12.00

SPECIAL REPORT

GHANA



TRAVESTY OF JUSTICE

How dirty politics killed uniBank

The tragedy of uniBank

... and the targeting of Dr. Kwabena Duffuor



A branch of uniBank Ghana which was closed down by the government on August 1, 2018.

Not many people know about the dirty behind-the-scenes politics that led to the collapse in August 2018 of one of Ghana's largest indigenous banks, uniBank. A bank that had been going strong for the previous 16 years, uniBank's troubles began only 7 months after President Nana Akufo-Addo came to power in 2017. Just a year later the bank was dead, killed through an orchestrated and combined action by the Ministry of Finance, headed by the president's cousin, Ken Ofori-Atta, the Bank of Ghana (the nation's central bank) and the Official Administrator/Receiver appointed by the Bank of Ghana for uniBank.

Apparently the government was targeting uniBank's majority shareholder, Dr. Kwabena Duffuor, the financial magnate from Kumawu in the Ashanti Region, who once served as the Governor of the Bank of Ghana and later the Minister of Finance under the late President John Atta Mills, and belongs to the main opposition National Democratic Congress (NDC). In the process of taking Dr. Duffuor down, the government collapsed uniBank.

During this operation, the government broke almost all the laws that govern the banking sector in order to get its way, causing the Attorney-General's Office to rebuke such blatant disregard of the law in a January 2019 letter it felt compelled to write to the

Ministry of Finance regarding these actions. In that bombshell letter, Ofori Atta's subordinates were instructed to keep its contents "under wraps" – but it leaked nonetheless.

What is worse: The government could have saved uniBank if it wanted, but clearly chose not to.

Without even using taxpayers' resources, the government could have stopped uniBank from going under by simply paying the bank about GH¢1.0bn that the government and its related entities already owed uniBank. But Ofori-Atta would not pay this indebtedness to uniBank, and instead the Ministry of Finance and the Bank of Ghana combined their powers to use the available insolvency laws to kill uniBank, even though the Ministry of Finance, the Bank of Ghana and the government itself owed uniBank nearly a billion Ghana cedis, which, had it been paid, would have saved uniBank without needing any other assistance from the government.

But that would have defeated their clandestine mission to kill the bank and destroy the reputation of its majority shareholder, Dr. Duffuor.

This is the harrowing story *Africawatch* reveals on the following pages. It is a tale that brings no honor to Akufo-Addo's government, and especially its Enforcer-in-Chief, Ken Ofori-Atta. It is a story of sheer dirty politics, the type that causes no nation to prosper and allows no citizen to stand proud.



Dr. Kwabena Duffuor,
the majority shareholder of uniBank.



How uniBank was killed



UniBank, a successful indigenous bank, which was shut down by the NPP government, apparently because its majority shareholder belonged to the main opposition political party.

Throughout this in-depth report, *Africawatch* reveals how the clandestine mission by the government to kill uniBank actually unfolded. We take readers through the destructive actions undertaken by the Ministry of Finance, headed by Ken Ofori-Atta, the Bank of Ghana, led by Dr. Ernest Addison, and the Official Administrator/Receiver, KPMG, headed by Nii Amanor Dodoo, and show how they all knowingly colluded to kill one of Ghana's most promising indigenous banks.

Documents that have recently come into the possession of *Africawatch* prove that one of Ghana's largest indigenous banks, uniBank, was actually destroyed on political grounds simply because the majority shareholder of the bank, Dr. Kwabena Duffuor, the former Governor of the Bank of Ghana and later Minister of Finance under the late President John Atta Mills, belonged to the main opposition party.

Otherwise, the bank could have been saved, and in fact deserved to have been saved, by President Nana Akufo-Addo's government. But because Dr. Duffuor belonged to the opposition National Democratic Congress (NDC), his bank had to die, deliberately killed by the ruling New Patriotic Party (NPP) government for the sake of politics! And all this played out under the keen eyes of the president's cousin, Finance Minister Ken Ofori-Atta, who, with the active assistance of the Bank of Ghana (BoG), dealt uniBank a sleight of hand and then buried it.

Sadly for Ghana, in the rush to kill this bank, Akufo-Addo's government, represented by the Ministry of Finance and the BoG, consciously broke almost all the laws governing the banking sector just so they could dispatch uniBank into the netherworld with ease, if not with impunity.

Even the Office of the Attorney General and Ministry of Justice, headed by another of Akufo-Addo's relatives, Gloria Akuffo, found the unlawful actions of the Ministry of Finance and the BoG so shocking that it sent a 11-page letter on January 25, 2019, to Ofori-Atta, rebuking the actions taken to close down uniBank (see story on page 68).

This is a story that brings no honor to Ghana's current government, especially how the government itself, the Ministry of Finance, the central bank, and the many quasi-government entities which owed uniBank about GH¢1 billion would not pay their indebtedness to help the bank stay afloat. It was callousness writ large, and whoever benefitted from that callousness only Ofori-Atta can tell – because he had in his gifts the power and resources to stop uniBank from going under, but he chose not to do it.

Worse, the Official Administrator and later Receiver appointed by the BoG to handle the uniBank matter, the international accounting firm KPMG, behaved as though it was part of the staff of the Ministry of Finance, if not the errant BoG, and thus helped to hasten the end of uniBank instead of saving it, as KPMG was actually mandated to do.

KPMG's role in the affair so shocked the uniBank shareholders that they still insist that Nii Amanor Dadoo, the KPMG official who acted as the Official Administrator for uniBank and was later made Receiver, was "illegally appointed" by the BOG. "Was this appointment a reward for carrying out BoG's agenda?", the shareholders ask.

According to the shareholders: "What was also not made known to the public was that the BoG and Nii Amanor Dadoo willfully failed to comply with Section 122(8) of Act 930, which prevented Nii Amanor Dadoo from holding any office in a bank which had undergone official administration, for a period of at least two years. How could such a monumental breach of the law occur if not as a result of a deliberate and brazen plot to cover up any 'lapses' that may have occurred on the part of the Official Administrator during his tenure?"

In the beginning

The story starts on August 1, 2018 when the BoG revoked the license of uniBank Ghana Limited and by that act killed a vision that was birthed in 1997 by Dr. Kwabena Duffuor and his partners to create a pan-African bank in Ghana to help fund the economic aspirations of not only Ghana but the African continent as a whole.

Before the bank was brutally closed

down, it endured what the bank's shareholders call "unprecedented, unreasonable, unjustified, unannounced and unilateral audits, downgrades and impairments of its loan book and other assets, including even government, quasi-government, Ministry of Finance and Bank of Ghana exposures. After the indecent collapse of the bank, it became clear that these deliberate and calculated audits of the bank's operations and the downgrades of its assets were done to drive it further into the abyss of insolvency and provide grounds for the targeted revocation of the licence."

Before the bank was brutally closed down, it endured what the bank's shareholders call "unprecedented, unreasonable, unjustified, unannounced and unilateral audits, downgrades and impairments of its loan book and other assets."

That action by the BoG ended an illustrious 18-year history that began on Feb. 3, 2000, when uniBank received its universal banking license from the BoG and commenced operations in 2001 with an initial stated capital of GH¢870,000.

After using the first few years to stabilize, uniBank experienced exponential growth over a 10-year period, between 2006 and 2016, and became a major fixture of the Ghanaian banking sector.

UniBank was flying. From 2006, the bank's stated capital increased from a mere GH¢7m to GH¢295m in 2016. Total deposits jumped from GH¢25.10m in 2006 to GH¢2.62bn in 2016. Loans and advances increased from GH¢15.72m in 2006 to GH¢2.88bn in 2016. Total assets increased from GH¢37.25m in 2006 to GH¢5.74bn in 2016. The future was bright for uniBank, and nothing in its stars showed that just two years from 2016 this prosperous indigenous bank would be dead ... and buried!

But the undertakers involved had different plans. The year 2016 happened to be the year the NPP won both the presidential and parliamentary elections with a landslide and took office on January 7, 2017. Then things soon changed for uniBank.

Here was a bank that had distinguished itself in the areas of customer service and digital banking. Its huge investment in IT had paved the way for improved services and the delivery of top-notch banking to over 400,000 customers in 54 branches nationwide.

Among Ghana's new breed of banks, uniBank was way ahead of the competition. With the right structures in place – competent and highly-motivated staff, sophisticated infrastructure and a good brand – uniBank doubled down on its growth and in the process built a Ghanaian brand that was comparable to its peers in the West African subregion.

A leading indigenous lender, uniBank became one of the few banks to support the government's development initiatives by financing mainly the consumer and small/medium enterprises (SMEs) sectors of the economy. Consequently, its loan book increased from GH¢220.6m in 2010 to GH¢536.2m by the end of 2012. Loan repayments were good, and asset quality equally so. Ironically, uniBank's success in supporting the government's development initiatives sadly became its downfall.

Government indebtedness

Starting from 2013, uniBank embarked on an aggressive financing of government and quasi-government projects, especially in the energy and construction sectors. Bulk Oil Distribution Companies (BDCs) became some of the major borrowers from uniBank. Thus, total loans and advances increased from GH¢825.3m in 2013 to GH¢2.88bn in 2016.

However, from 2013 onwards, the government and quasi-government customers could not make their repayments on time to uniBank because the government, then under the NDC's President John Mahama, was experiencing severe cash problems and therefore could not pay government contractors on time to enable them to make their repayments to uniBank, which had funded their projects.

This resulted in severe liquidity shortfalls and persistent clearing failures for uniBank. In the meantime, redemptions and withdrawals started peaking, forcing uniBank to rely on daily borrowings from other commercial banks, including liquidity support from the BoG, which attracted a high interest rate of 26% per annum.

The conundrum was that if the government contractors and quasi-government entities had been paid what they were owed by the government as and when their payments fell due, then uniBank could have certainly prevented the daily clearing failures that persisted and the rush on deposit withdrawals.

As it happened, between 2013 and 2016, although uniBank's clients were holding government receivables (Interim Payment Certificates or IPCs) amounting to almost GH¢1.0bn, the government could still not



Dr. Kwabena Duffuor II, the CEO of uniBank and the son of the majority shareholder Dr. Kwabena Duffuor. They had to watch in agony as their once prosperous bank died a slow death at the hands of Akufo-Addo's government.

pay the contractors and other clients to enable them to honor their obligations to uniBank.

The delays in the payment of government-related exposures over this period compelled uniBank to rely on the BoG's expensive liquidity support, which, between 2013 and 2016, cost uniBank an interest payment total of almost GH¢948m.

Furthermore, the delays in repayment to uniBank by government and quasi-government institutions led to non-performance of the bank's credit facilities, and hence a deterioration in the quality of its assets.

By the end of 2016, these delays had become a major challenge not only for uniBank, but for the whole Ghanaian economy. The inability of the government to pay contractors and other entities had cascaded into the whole economy and led to, in the case of many banks, the non-performance of loans and advances, causing serious deterioration in the quality of assets throughout the entire banking industry.

To resolve the problem, President John Mahama's government engaged the International Monetary Fund (IMF) to enter into a coordinative arrangement with the Bank of Ghana (BoG) that led to the development of a strategic roadmap to strengthen Ghana's banking sector.

The cornerstone of that roadmap was an Asset Quality Review (AQR) involving all the banks operating in Ghana. It was a special exercise to assess the quality of the financial exposures in the form of loans, advances and investments. The AQR was completed in March 2017 and identified 9 banks as being undercapitalized, with an aggregate capital shortfall of about 1.6% of GDP.

Unfortunately, uniBank was among those 9 banks. The AQR result showed that uniBank had a Capital Adequacy Ratio (CAR) of 4.71% by March 2017, instead of the mandatory 10%.

Therefore, in accordance with Section 106(1) of the Banks and Special Deposit-Taking Institutions Act, 2016 (Act 930), uniBank's management had to submit to the BoG, within 45 days, a capital restoration plan and to rectify the significant undercapitalization within 90 days. It also had to restore the bank's CAR to at least the prescribed minimum of 10% within 180 days from March 20, 2017.

But on March 30, 2017, uniBank's management requested BoG's Banking Supervision Department (BSD) to conduct a further review of some selected accounts covering the period up to December 31, 2016, which were downgraded during the AQR exercise. This had become necessary because Ghana's new government, headed

by President Akufo-Addo and the Bank of Ghana, had taken over the debts of all the Bulk Oil Distribution Companies (BDCs), while some of uniBank's downgraded accounts had improved in terms of loan classification and/or collateral securities, and therefore they had been revalued since the conclusion of the AQR exercise.

The Banking Supervision Department obliged and conducted a review, which reduced uniBank's impairment figure by GH¢52,599,448.20 as a result of perfected and revalued collateral securities. Accordingly, the BoG told uniBank in a report: "Our re-computation showed that your bank is now undercapitalized with a Capital Adequacy Ratio of 6.07% and a Capital Deficiency of GH¢135,576,056.57 based on your position as at 31 March 2017."

Following the BSD review, uniBank's shareholders injected the required capital and restored the bank to a CAR of 10.70% within the timeframe stipulated by the Bank of Ghana. Thus, by July 31, 2017, uniBank had a minimum paid-up capital of GH¢370.13m, which was the highest in the whole banking industry in Ghana.

With its income surplus standing at GH¢51.97m at the time, and a minimum paid-up capital of GH¢370.13m, uniBank had a total paid-up capital of GH¢422.10m when the two were summed up. The total equity stood at GH¢500m, again one of the highest in the industry at the time. Thus, uniBank was solvent by July 31, 2017.

The bank's turnaround story was so evident that the BoG singled it out as being among three banks in a good position to meet the GH¢400m capital requirement at the time. Thus, for the shareholders, board, management and stakeholders of the bank, it was a relief that the bank had emerged from the AQR exercise stronger than before and it was now on its way to regaining its spot as a formidable indigenous brand strategically positioned to support the growth and development of the economy.

BoG's role

At this point, most people believed that the objective of the roadmap implementation exercise by the central bank was to strengthen the capitalization of Ghanaian banks. Unfortunately for uniBank, this was not to be. Events that unfolded after the AQR exercise showed that a grand and clandestine scheme to harass the bank was just beginning to unfold.

These events gave reason to believe that the roadmap implementation path chosen by the BoG for uniBank was not to strengthen the bank but to drive it into insolvency at all costs in order to justify its



Governor of the BoG, Dr. Ernest Addison – UniBank was killed under his watch, in a mission believed to have been sanctioned by his political bosses.

resultant collapse.

Trouble started when the BoG singled out uniBank for the high jump. All out of the blue, the central bank embarked on an unplanned monthly auditing (or on-site inspection) of uniBank, with each one ending up in a massive downgrading of uniBank's loan book.

The rule of thumb in Ghana's banking industry is for every bank to be audited

once a year by the BoG. In the industry parlance, this is called a "planned audit or on-site inspection" by the central bank's Banking Supervision Department (BSD). The date of the inspection or audit is always communicated well in advance by the BoG, and every bank knows when the central bank auditors would arrive. Every bank gets a report from the BoG after the audit and the banks are obliged to act on their

individual reports.

In 2017, however, the BoG decided unilaterally to treat uniBank differently. The bank's planned audit was scheduled for May 15 to June 21, and uniBank got its audit report on August 15. It showed that the bank's CAR of 10.7% had fallen to 8.24%, following the downgrading of some selected loans and advances by the BSD during the audit.

As uniBank's management was studying the BSD audit report with a view of finding the necessary corrective measures, another BSD team of auditors arrived unannounced in August to begin another audit. The team went on to downgrade the same credit facilities that the previous BSD team had audited and downgraded. This time the BSD team downgraded uniBank's loan book so massively that its CAR fell from 8.24% to 4.80%, meaning that within the month of August alone, uniBank's CAR had been reduced by the BSD from 10.7% to 8.24% and again from 8.24% to 4.80%.

But worse was to come. In September 2017, yet another BSD audit team arrived unannounced to review the same accounts in an exercise the BSD called a "classification of loan sample".

In this exercise, the BSD covered 87 accounts (about 72% of uniBank's total loan book) and downgraded some more credit facilities. This reduced the total paid-up capital from GH¢422.10m to GH¢153.30m. Justifying this unplanned audit, which clearly amounted to harassment, the BoG claimed it was "due to losses being made in the current year. In spite of [uniBank] having the highest paid-up capital of GH¢370.13m, [it] will still have to raise additional funds of GH¢246.80m to make up for the shortfall arising from their impairment of capital," the BoG said.

But this did not make much sense to uniBank. According to its management, "this comment was and is regrettable because the whole universal banking industry and, indeed all Ghanaians, were aware that uniBank was not a loss-making institution until the BSD began their inexplicable on-site and unplanned monthly auditing and downgrading of the same credit facilities. In fact, all these so-called losses were induced by the BoG's BSD."

But more bad news was on the way. In October 2017, the BSD sent yet another audit team unannounced to uniBank to carry out further auditing and downgrading of the same credit facilities that had been downgraded by the three previous BSD teams. This fourth unplanned audit wiped out uniBank's entire paid-up capital of GH¢422.10m and registered a huge loss in the Income Surplus Account, sending the

CAR tumbling into the negative.

In short, between May and October 2017, the BSD sent 4 audit teams to uniBank – 3 of them unannounced – to audit and downgrade the same loan book. This was unprecedented in Ghana's banking history. It was clear that the BoG was on a mission, working on behalf of its political masters who were determined to kill uniBank at any cost.

Curiously, the BSD's fourth audit team downgraded even the government's and quasi-government's indebtedness to uniBank, which gave the impression that even

Between May and October 2017, the BSD sent 4 audit teams to uniBank – 3 of them unannounced – to audit and downgrade the same loan book. This was unprecedented in Ghana's banking history. It was clear that the BoG was on a mission, working on behalf of its political masters who were determined to kill uniBank at any cost.

the whole Government of Ghana (GoG) was insolvent and could not be trusted to pay the debt it owed to uniBank.

At the time, the government and government-related entities owed uniBank a total of GH¢868.974m, broken down into: Cocobod GH¢137,499,785.98. Ministry of Finance GH¢223,049,048.72. Road Fund GH¢229,434,748.82. GETFUND GH¢2,023,981.10. Bank of Ghana GH¢19,781,376.00. Bulk Oil Distribution Companies GH¢105,741,493.33. Other government contractors GH¢52,889,558.49. Quasi-government entities GH¢98,553,636.86.

This is the indebtedness that the BSD's fourth audit team downgraded, causing a dumbfounded uniBank management to say: "The regulator set itself on a pre-conceived course to expropriate the property of the shareholders." The BSD did not even bother to issue the normal audit reports after the three unplanned audits of uniBank

Harassing a bank

Despite what clearly appeared to be harassment by the BoG, uniBank's management and Board continued to work hard in the very hostile environment caused by the BSD. Against all odds, by the end of December 2017, uniBank's CAR had

improved dramatically to a positive 5.20% as a result of a GH¢60m capital injection by the shareholders.

Confirming this in a letter dated February 28, 2018, the BSD stated: "We have reviewed the prudential returns of your bank for December 2017 in accordance with our duties and responsibilities under Section 3 of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930). The returns revealed a marked improvement in uniBank's CAR within one month by 12.28% from negative 7.08% recorded in November 2017 to positive 5.20% in December 2017."

But the BSD had bad news further on in the letter. Although uniBank's CAR had improved between November and December 2017, the BSD said it had noted at the same time from the bank's 2017 returns that there had been "an increase of GH¢760,675,826.23 in gross loans from the September 2017 position of GH¢3,337,574,219.77 to the GH¢4,098,250,046.00 recorded in December 2017, in spite of the directive from the Bank of Ghana to uniBank to cease granting new loans and advances, both funded and non-funded, except fully cash secured credit facilities".

The BSD therefore requested uniBank to provide a written response for discussion at a meeting scheduled for March 2, 2018. At the meeting, uniBank's management explained that: "The increase in gross loans and advances from September 2017 to December 2017 was not due to new advances. As mentioned in an earlier communication to the BoG, we encountered some system challenges after migrating from Temenos banking software R08 to R15. This affected AA Contracts, specifically loans, deposits and borrowings, resulting in some customer contracts not reporting properly. Most of the issues, in consultation with Temenos consultants, have been rectified, resulting in the increase in advances."

The BSD refused to accept uniBank's explanation, and without any further investigation or discussion with the bank's Board of Directors, the BSD cavalierly downgraded the whole GH¢760m.

"It had become clear at this stage", as uniBank's shareholders put it, "that the BoG's Banking Supervision Department had decided to operate outside the powers they had under Act 930. Thus, through arbitrary impairments, inexplicable and unplanned auditing and downgrading of various credit facilities, uniBank's CAR had reduced from positive 5.20% to negative 24.02% at the end of December 2017 as a result of the impairment of this huge figure of GH¢760m.

"This impairment by the BoG, on the

basis of the claim that this was from the granting of new loans between September and December 2017, and the resulting figures provided in a statement to the press by the Governor of the BoG, were unreasonable acts of the central bank, contrary to Articles 23 and 296 of the Constitution of Ghana, and were designed to put uniBank out of business and wipe out the investments of its shareholders.”

BoG’s aggressive monthly auditing and downgrading even affected the GH¢1,338.90m that uniBank had provided for over and above the provisions made during the annual audit between May and June 2017.

“It was now clear,” say uniBank shareholders, “that the audits and downgrading of uniBank’s credit facilities by the BoG were not only unlawful and in bad faith, but were done with a view to putting uniBank out of business. How can a regulator impair its own exposure to a bank? What kind of central banking logic allows this unethical action?”

“By downgrading the exposures of the Government of Ghana, including validated Interim Payment Certificates issued to contractors by the government, the BoG was purporting to declare the Government of Ghana not creditworthy. The shareholders maintain that the BoG acted unreasonably and ultra vires, contrary to their own powers granted by Act 930.”

Letter of contention

Finally fed up, uniBank’s Board of Directors wrote to the BSD on January 18, 2018, expressing deep concern about what the unplanned monthly auditing was doing to the bank. “It is crucial at this stage to draw your attention to the fact that uniBank had not been a loss-making institution until the BSD began their inexplicable on-site monthly auditing and downgrading of the same credit facilities,” the letter said.

“It is also common knowledge that on-site examination by the BSD is conducted once a year in each bank,” the letter continued. “However, in the case of uniBank, in addition to the on-site examination which ended on 15 August, the BSD has had three additional visits, all of which uniBank was not given reasons for.

“All these three visits were spent on auditing and downgrading the same accounts on which the earlier on-site examination had made provisions for. In effect, what it means is that since August these same accounts have been downgraded four times. And the unfortunate aspect is that, the downgrading even included government and quasi-government exposures to uniBank.”



Sad end: A branch of uniBank which went under when its license was suddenly withdrawn.

The letter went on: “The unfortunate story of uniBank needs to be told now! It is a story of a leading indigenous bank which had the highest paid up capital in the industry with a CAR of 10.7% at the end of July 2017. A story of a bank that had been featured twice as Ghana’s Sixth Most Prestigious Enterprise in both the 2015 and 2016 ‘Club 100 Awards’, and yet has been weakened in just three months through inexplicable auditing and downgrading of the same credit facilities, including government and quasi-government exposures by the Banking Supervision Department of the central bank...”

“It would also be relevant to point out that the activities from 15 August to date were all outside the ‘Examination Plan for 2017’. These ‘off-examination plan for 2017’ activities of BSD sent wrong signals to the market and began to undermine the public confidence in uniBank. Therefore, since 15 August 2017, the bank has been working under extremely strained conditions. It has become even more difficult as the government has not been able to settle or pay the

already validated interim payment certificates worth over GH¢800m to uniBank to improve its liquidity.

“We wish to state that the shareholders have no issue with accepting the provisions arising out of the on-site examination which ended on 15 August 2017. However, the shareholders wish to emphatically state that they will not accept the additional provisions stemming out of the inexplicable, additional on-site examinations, contrary to standard practice.

“This deviation from the norm without reason or explanation is totally unacceptable. The shareholders would have expected that if some irregularities or inconsistencies were flagged up during the initial on-site examination, a report would have been prepared and discussed with the management of the bank after which another examination could be undertaken.

“This was not done, yet three more examinations were conducted without even giving uniBank the time to rectify all the concerns raised in the initial report dated 31 August 2017. We must state, that the



only report we have received till date is that dated 31 August 2017. No reports were produced for all the subsequent onsite examinations after which accounts were downgraded, again a deviation from the norm.

“In effect, we still stand by the official report dated 31 August 2017, and believe that uniBank will be able to rectify the concerns raised in this August 2017 report by the time the BSD conducts the 2018 on-site examination. This has been the practice which the BSD has followed all these years. The Board has therefore instructed the management of the bank to henceforth rely on the 15 August 2017 BSD examination results as the basis for the preparation of all their returns.”

The letter, which was addressed to the Head of the BSD Osei Gyasi, was signed by Prof. Newman Kwadwo Kusi for the uniBank Board Chairman.

It was copied to President Akufo-Addo's office, and additionally to Vice-President Dr. Mahamadu Bawumia; and to the Minister of National Security Albert Kan-Dapaah; to the Governor of the BoG Dr. Addison; to the First Deputy Governor of the BoG Dr. Maxwell Opoku-Afari; to the Head of Research (BoG) Dr. Benjamin Amoah;

to the Head of Banking (BoG) Mrs. Peggy Osei-Tutu Dzodzomenyo; to the Acting Head of Financial Markets (BoG) Stephen Opata; and finally to Dr. Kwabena Duffuor II, CEO of uniBank.

But nothing much came out of this widely circulated letter. It was obvious that the political godfathers had already decided the fate of uniBank, and whatever the bank did thenceforth was a lost battle.

Finally, after 12 days of the letter in its possession, the BSD found the grace to respond on January 30, 2018, explaining that the BoG had taken the steps complained about by the uniBank Board, ie, downgrading uniBank's loan book, because “after [the] completion of the AQR exercise in March 2017, it was determined that uniBank was significantly undercapitalized with a CAR of 4.71%”.

But the uniBank management denies this claim. “Indeed, this statement from the regulator was incorrect because both the liquidity and solvency of uniBank had improved remarkably between May 2017 and July 2017,” the management says. “In fact, both the BSD and uniBank knew that before the end of the 2017 annual on-site inspection, uniBank's CAR was 10.70%. The minimum paid-up capital stood at GH¢370.13m and it was the highest minimum paid-up capital in the whole banking industry in Ghana. These were undisputed facts that were alluded to by the BoG itself as explained earlier.”

The BSD's letter, signed by its Acting Head, Osei Gyasi, defended the three unplanned audits of uniBank, saying “the frequent on-site examination by the BSD to your bank is not unconventional, but necessary due to the risks that uniBank poses to the broader financial system. In any case, the BSD, and for that matter the Bank of Ghana is not precluded from conducting additional or follow-up on-site examination visits on any bank or deposit-taking institution. Kindly see Sections 94 and 95 of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) on the conduct of examinations.”

But Osei Gyasi declined to name any other bank, apart from uniBank, that had ever been given that rough treatment (three unplanned monthly audits), even though the law gives the BoG the right to do so.

The Official Administrator

As it were, on March 20, 2018, the BoG announced via a press release that it had appointed KPMG and its official Nii Amanor Dodoo as the Official Administrator (OA) for uniBank.

The BoG stated that it was acting under Section 107 and 108 of Act 930, and specifically emphasized the authority of the Official Administrator under Section 108 as: “To exercise a variety of powers to rehabilitate and return [uniBank] to regulatory compliance within a period of six months, at the end of which the bank will be returned to private ownership and management.”

The BoG added that “during the period of official administration of uniBank, the bank will remain open for business under the management and control of KPMG overseen by the Bank of Ghana, and is not being closed and liquidated”.

The central bank made it clear that it had taken the action to put uniBank under official administration because the bank had been identified after the Asset Quality Review in 2016 as “significantly undercapitalised with a CAR of 4.75%”. However, the BoG deliberately refused to disclose to the public that uniBank shareholders had also injected additional capital, which had then raised the CAR to 10.70% as at July 2017.

This implied that the BoG relied on the 4.75% CAR for the uniBank roadmap implementation exercise, and not the 10.70% CAR to push the bank under official administration.

“It therefore appeared that the Bank of Ghana had set itself on a pre-conceived course to put uniBank under an official administrator,” says uniBank's management. “This explained the arbitrary and unethical actions taken by the BSD between 15 August and 31 December 2017.”

Unfortunately for uniBank, the coming into office of the Official Administrator brought with it another round of a tortuous process for the bank.

As the shareholders recall: “Just two months on the job, which was meant to last almost 12 months, the Official Administrator unilaterally impaired almost the entire uniBank loan book, including government, quasi-government and BOG's own receivables, all valued at almost GH¢1.0bn. Other attractive bank assets, including landed properties, were also impaired unilaterally.

“The Official Administrator also refused to consider the shareholders' credible capitalisation proposal from a first-class international bank, which would have allowed the OA to comply with Section 115 of Act 930, and that would have spared the State from jeopardising the lives of thousands of Ghanaians and spending billions of cedis to contain the ripple effect of the withdrawal of the bank's licence.”

The shareholders continue: “The truth that ought to be known by the Ghanaian public is that the Bank of Ghana relied on

a Draft Report dated 13 July 2018 by KPMG/OA with several caveats to revoke uniBank's banking licence. A true account of the situation exposes the deliberate steps, from the onset, by the Bank of Ghana, through its Banking Supervision Department and the OA, to weaken uniBank, ignore credible efforts by the shareholders to revive the bank, and ultimately withdraw its licence."

Operational challenges

At the start of KPMG's "official administration" of uniBank, the BSD's Acting Head, Osei Gyasi, met the uniBank management and made it clear that KPMG's appointment was for an initial period of 6 months but could be extended for a further three months and yet another three months, making it 12 months in total.

Osei Gyasi again emphasized that uniBank was not under receivership, but KPMG had been appointed to assume all powers, functions and responsibilities of the shareholders, directors and key management of the Bank in accordance with Section 108 of Act 930 and, therefore, the central bank expected utmost cooperation with KPMG.

The BSD Acting Head also noted that in accordance with KPMG's duties, it was to ensure that uniBank became financially viable and then put on a recapitalization phase with shareholders given the right of first option.

"It was disclosed at this meeting," say uniBank shareholders, "that the bank's solvency was negative GH¢551m, and this was due to the BSD's monthly auditing and downgrading of the loan book, including the instant impairment of GH¢760.67m.

"As at 31 March 2018, uniBank customers' deposits stood at GH¢4.28bn. By 31 July 2018, the customers' deposits had declined to GH¢3.5bn. The reduction of about GH¢780m in four months was as a result of significant withdrawals by customers under the new KPMG management. The OA was unable to drive deposit mobilization which was critically needed for loans servicing."

The shareholder went on: "Although the Bank of Ghana's Emergency Liquidity Support for uniBank stood at GH¢2.2bn as at 30 March 2018, uniBank also had liquid assets amounting to GH¢1.75bn with the Bank of Ghana. These comprised of Treasury Bills of GH¢633.5m; US dollar deposit balance equivalent to GH¢1,779m, and Interim Payment Certificates (IPCs or government and quasi-government receivables) of GH¢936.6m.

"It is pertinent to note that by 31 July

2018, four months after the Official Administrator had assumed the management of the bank, uniBank's solvency deteriorated from GH¢551m to negative GH¢1.45bn.

"Also, the Bank of Ghana's liquidity support to uniBank had risen to GH¢3.14bn in just four months under the Official Administrator's management, as compared to GH¢2.2bn reported on 20 March 2018 when KPMG took over. This registered an increase of GH¢927.2m in just four months.

"The truth that ought to be known by the Ghanaian public is that the Bank of Ghana relied on a Draft Report dated 13 July 2018 by KPMG/OA with several caveats to revoke uniBank's banking licence. A true account of the situation exposes the deliberate steps, from the onset, by the Bank of Ghana, through its Banking Supervision Department and the OA, to weaken uniBank, ignore credible efforts by the shareholders to revive the bank, and ultimately withdraw its licence."

This huge increase was mainly due to the panic withdrawals by customers as a result of the management style."

By April 2018, the total assets of the bank stood at GH¢8,747,835,609.58 compared to total liabilities of GH¢8,955,872,957.69. Strangely, the very next month, KPMG effected what the uniBank management calls "inexplicable and unilateral impairments of the bank's loan book and other assets".

KPMG impaired GH¢3,082,005,927.55 on the loan book, and even downgraded all the government and quasi-government indebtedness to the bank, amounting to about GH¢1.0bn, some of which had been issued with Interim Payment Certificates (IPCs) by the government.

"Although IPCs qualify as collateral under Section 2.2.3 of BoG's Guide for Financial Publications for Banks for the purpose of impairments or provisioning," explains the uniBank management, "the Official Administrator ignored this and impaired the whole government and quasi-government receivables.

"Interestingly, after impairing all these

receivables on 31 May 2018, KPMG yet wrote to the Ministry of Finance on 22 June 2018 requesting payment of the same receivables it had impaired on 31 May," says uniBank's management. "It is instructive to add that the response to KPMG's letter to the Finance Ministry was received on 12 July 2018. Nineteen days later, on 1 August 2018, uniBank's licence was withdrawn by the BoG, without the government and the Finance Ministry's indebtedness having been paid. Even the BoG's own indebtedness to uniBank had not been paid."

On the same May 31, 2018, KPMG had also, without consultation or discussion with uniBank's shareholders, impaired "other assets" of the bank amounting to GH¢3,708,861,242.98 on the basis that improper procedures had been employed in recording those transactions.

UniBank shareholders were dumbfounded. "The Official Administrator did not base his decision on any acceptable guidelines set by any professional valuer," they say. "Considering the nature of the items in the 'other assets' category, including quality landed properties and buildings in prime locations such as Ridge and the Airport Residential areas of Accra, and the fact that impairment is about recognising deterioration in a given asset value, the shareholders found it difficult to accept the situation in which prime properties whose values were rapidly appreciating could be completely impaired at the same time.

"Again, to strengthen the bank's balance sheet, the shareholders provided assets valued at GH¢4.4bn with a forced sale value of about GH¢3.52bn to be liquidated or leveraged for injecting liquidity. Unfortunately, that was totally ignored by the Official Administrator in finalising the 31 May 2018 financial position of the bank.

"The Official Administrator took this arbitrary action in spite of the fact that Sections 2.2.3 and 2.2.4 of the Bank of Ghana's Guide for Financial Publication for Banks allow the forced sale value of such assets to be treated as 'assets held for sale'. The shareholders presented these assets on 10 April 2018 and continued to engage KPMG on the process of perfecting these assets to support the balance sheet. We were, therefore, surprised that KPMG ignored these assets without recourse to the shareholders simply on the basis that KPMG did not have sufficient time to do so."

KPMG writes to Ministry

On June 22, 2018, almost one month after downgrading almost all the uniBank assets, including the government and



Nii Amanor Dodoo of KPMG, appointed Official Administrator and later Receiver for uniBank.

quasi-government indebtedness, KPMG wrote to Finance Minister Ofori-Atta about uniBank's "government and government-related receivables".

Signed by Simon Dornoo for the KPMG Official Administrator, the letter said: "We wish to bring to your attention and request that you use your good offices to assist uniBank Ghana Limited receive

overdue amounts from Government and Government-related entities.

"These receivables totaling GH¢868,973, 599.10 as at May 31, 2018 ... are the repayment sources for various facilities granted by the bank. We will welcome the opportunity at your earliest convenience to discuss this matter and provide any additional information and/or clarification that you

require."

The letter tabulated the individual indebtedness of the government and government-related entities. Crucially, the reply did not come from Ken Ofori-Atta, it came from Deputy Finance Minister Charles Adu Boahen, who wrote back to KPMG on July 12, 2018, saying: "[The] Ministry of Finance appreciates your role as Official Administrator for uniBank. MoF is currently validating the numbers together with [the] Bank of Ghana and as soon as practicable, would revert with full details as requested."

A day after receiving the Ministry of Finance's reply, KPMG went on to declare uniBank insolvent. In a draft report dated July 13, 2018, titled, *Financial Condition and Future Prospects of uniBank Ghana Limited – Updated*, KPMG told the BoG that uniBank could not be rehabilitated. Following this recommendation, the BoG revoked uniBank's license on August 1, 2018.

On the same day, the BoG turned KPMG into a Receiver for uniBank, an action which was against the law. On September 4, 2018, KPMG (the ex-official administrator now turned receiver), having excluded uniBank's "other assets" from the balance sheet in the May 2018 returns, issued a writ in the Commercial Division of the High Court, asking that the "other assets" be now preserved for it as a Receiver.

According to uniBank shareholders: "The distasteful u-turn of the Official Administrator turned Receiver confirms the position of the shareholders that the central bank set in motion a grand scheme to run uniBank into insolvency, using all available unethical, crude and vile measures by either its own staff or other assigns.

"If not, why will an Official Administrator with the interest of the institution under administration at heart, refuse to recognise assets presented by the shareholders to help the bank's position, but suddenly turn around to ask a court to ring-fence the same assets he had downgraded for him to appropriate to the same bank (now under receivership) after the bank's licence had been revoked for reasons that would have been cured by the recognition of the rejected assets?"

It is quite instructive that under KPMG administration, uniBank's total liabilities had increased to GH¢9,162,334.25 by May 2018, whilst its total assets had been reduced to GH¢2,101,512.45 from the April 2018 level of GH¢8,747,835.61. This was because GH¢6,646,323.16 had been impaired against the income surplus account.

As a result, the total shareholders' funds deteriorated from negative GH¢208m by April 2018 to negative GH¢7.2bn by May

2018. In effect, the impairments had reduced the shareholders' funds by almost GH¢7.2bn, a situation that rendered uniBank technically insolvent.

Say the uniBank shareholders: "From the above, it has become clear that Nii Amanor Dodoo, the Official Administrator of yesterday and now a Receiver, contravened Article 23 of Ghana's 1992 Constitution, which imposes a duty on administrative bodies and officials to act fairly and reasonably and comply with the requirements imposed on them by law.

"Again, by unilaterally impairing the bank's assets to the value of about GH¢6.7bn out of the total assets of about GH¢8.7bn and declaring the bank technically insolvent just two months on the job, which was to take a minimum period of six months, shows clearly that the Official Administrator acted recklessly, unreasonably and in bad faith.

"We also note other unreasonable acts of the Official Administrator, which were contrary to Articles 23 and 296 of Ghana's Constitution, and which were designed to put uniBank out of business and wipe out the investments of shareholders.

"In a letter dated 2 March 2018, uniBank notified the Acting Head of the BSD that there were additional receivables attributable to the government backed by supporting documents, amounting to GH¢955,586,421.39. No response had been provided to this letter at the time of the appointment of the OA.

"We hold the view that the technical insolvency of uniBank was caused by the OA's unreasonable, unjustifiable, and unilateral impairment of the bank's entire loan book and 'other assets', including even government and quasi-government and even BoG exposures to uniBank, and validated payment certificates issued to contractors by the Government of Ghana.

"Indeed, the OA acted unreasonably and in bad faith, and thereby went outside the powers it had under Act 930. This is evidenced by the OA's rejection of the capital injection proposals presented by the uniBank shareholders."

Credible rehabilitation proposals

To save uniBank from going under, the shareholders made the following commitments to KPMG to inject the needed capital into the bank with the view to achieving a well-capitalized and solvent bank:

● In a letter dated July 12, 2018, the shareholders informed KPMG that they were committing GH¢2.7bn and assets worth GH¢4.4bn (totaling GH¢7.1bn) into the bank to recapitalize it and make it



A branch of CBG in Accra. The government allowed the bank to start doing business when it had not been licensed to do so, thus breaking the banking laws of Ghana with impunity.

solvent. In the same letter, the shareholders informed KPMG that they were engaging a first class international bank as a strategic partner of uniBank and that the strategic partner would play a major role in the future management of the bank, if the Bank of Ghana approves the arrangement.

● In the same July 12 letter, the shareholders informed KPMG that, as they had stated in an earlier letter to the KPMG on April 10, 2018, "the Belstar Consortium still maintains its commitment to off-load all its shares in ADB Bank and invest the proceeds into uniBank. This would bring in additional funds of about GH¢700m".

"Indeed, these were credible rehabilitation prospects, which were proposed to the Official Administrator on 12 July, 2018," uniBank shareholders recall. "It is on the

record that this letter from the shareholders was received and acknowledged on the same day we sent it. Regrettably, the shareholders never received any response from the OA.

"Also, in the press release of 20 March 2018 by the BoG Governor, Dr. Addison, appointing KPMG as OA, he stated that he was acting under Sections 107 and 108 of Act 930, and specifically recited the authority of the OA under Section 108 'to exercise a variety of powers to rehabilitate and return the bank to regulatory compliance within a period of six months, at the end of which the bank will be returned to private ownership and management'. The OA, however, acted contrary to the above. The OA declined to accept the credible rehabilitation plan of the shareholders,



which would have had a positive effect on the capital and balance sheet of uniBank.”

Remarkably, just a day after the shareholders had submitted their resuscitation plan, KPMG, without any feedback either in the form of discussion or a written reply to the shareholders, sent its “draft report” on uniBank to the Bank of Ghana upon which the BoG withdrew uniBank’s license.

According to uniBank’s shareholders, the draft report, which had “many caveats”, did not comply with Section 115 of Act 930, which gives the existing shareholders the first option to increase their capital through the issuance of new shares.

The shareholders say: “It is difficult to understand why the OA went outside the powers it had under Act 930 and declared the bank technically insolvent when the shareholders had submitted a proposal to inject the required capital into the bank so as to comply with Section 115 of Act 930.”

The documents in the hands of *Africawatch* show that at the request of the

shareholders, a meeting was held on July 30, 2018 at the premises of KPMG. The shareholders expressed deep concern about what they called “the unreasonable and unlawful” downgrading of uniBank’s assets by KPMG, especially the indebtedness of the government and government-related institutions.

The shareholders reiterated their readiness to inject further capital into the bank as had been previously communicated to KPMG. They also expressed frustration for not being given the opportunity to provide any additional capital to shore up the bank. To the shareholders, no lawful basis existed for the denial of the opportunity to inject more capital to save the bank.

At this meeting, the shareholders presented to KPMG an offer letter of US\$400m from a first-class international bank to be injected into uniBank in two tranches of US\$200m each. But KPMG disregarded this offer.

So uniBank died

On the same July 30, 2018, the Bank of Ghana met KPMG and representatives of uniBank’s shareholders at the central bank, during which the shareholders expressed concern about certain aspects of uniBank’s May/June 2018 financial report, which they considered to be grossly inappropriate and worrying.

BoG’s first Deputy Governor, who chaired the meeting, advised the shareholders to forward their concerns in writing to the central bank. The next day, the shareholders submitted their letter containing their concerns to KPMG, with copies to the BoG’s Deputy Governors. Both KPMG and the Deputy Governors acknowledged receipt in the morning of August 1, 2018.

In the letter, the shareholders drew attention to the lack of justification for the impairments of uniBank’s assets by KPMG, particularly the government-related receivables.

The shareholders maintain that if their commitments to inject further capital of about GH¢7.1bn had been allowed by KPMG, uniBank could have been saved, and would have prevented the disarray that the livelihoods of thousands of Ghanaians have been thrown into. Also, the use of Ghanaian taxpayer resources to fund the gap between uniBank’s assets and liabilities would not have arisen.

In the afternoon of August 1, 2018, while the shareholders were anxiously waiting to receive an official response to their letter, they instead got the shock of their lives from the media, announcing that the Bank of Ghana had revoked uniBank’s license,

together with four other banks, and that the central bank had appointed Nii Amanor Dodoo of KPMG as the Receiver for uniBank.

The Bank of Ghana’s press statement also announced that the government had established a new indigenous bank, Consolidated Bank Ghana Limited (CBG), and that the BoG had appointed a receiver in respect of the assets and liabilities of the five banks, in addition to consolidating the good assets and liabilities of the banks in CBG with immediate effect.

On the same day, the BoG granted a universal banking license to the CBG, which was said to be 100% owned by the Government of Ghana.

On the very same day, August 1, 2018, the CBG was incorporated and the good assets and liabilities of the five banks were transferred to it. But CBG did not receive its certificate to commerce business until August 2, 2018, which means that all those transactions conducted by CBG prior to August 2 were in clear violation of Section 27 of the Companies Act, 1963 (Act 179) and are thus deemed illegal by Ghana’s business laws. Which raises the burning question that if you are part of the government, does that mean you are then above the law? No individual or company can openly break a country’s laws, so how is it the CBG could openly do that here?

Interestingly, in supporting the BoG action, Finance Minister Ofori-Atta issued a press statement confirming that the government had taken note of the measures announced by the BoG to consolidate the five banks, “as part of the effort by the government to restore confidence and trust in our banking system”.

The Ministry of Finance also confirmed the capitalization of the CBG as GH¢450m, and that the CBG will be supported by a GH¢5.76bn bond issuance to purchase the good assets and liabilities of the 5 banks.

By the end of the day, it had become clear that, contrary to the BoG’s own indication that uniBank would be returned to private ownership and management in six months’ time, the central bank had rather sought to transfer uniBank’s “good assets and liabilities” to the CBG as quickly as possible.

This decision, according to the BoG, was based on the recommendation made by KPMG, now the receiver, to the effect that uniBank was beyond rehabilitation, meaning its liabilities far exceeded its assets.

In all this, the BoG refused to make public that, despite the monthly auditing and downgrading of uniBank’s loan book, and the subsequent registering of over GH¢1.3bn capital deficit which forced the CAR to negative 24.02% at the end of

December 2017, the bank's total assets as of April 30, 2018 still stood at GH¢8.75bn against total liabilities of GH¢8.96bn.

"The truth of the matter," say uniBank shareholders, "was that, with the income surplus account at negative GH¢208m at the end of April 2018, KPMG believed that uniBank shareholders had the capacity to recapitalise the bank and restore it to regulatory compliance. However, since this was not going to help them to achieve their pre-determined objective of collapsing the bank at all cost, they decided to act recklessly and unprofessionally at the end of May 2018."

A campaign to destroy

Immediately as the government announced the establishment of the CBG, the media and the general public began to discuss the contents of a "report" which was purported to be the Official Administrator's report on the financial condition and future prospects of uniBank. Strangely, uniBank and its shareholders had not been given a copy of this report. Consequently, on August 3, 2018, the shareholders wrote to the BoG asking for a copy of the KPMG report for their study.

The BoG waited for ten days before replying on August 13, declining the shareholders' request and saying it was "unable at this time to make available to you a copy of the Official Administrator's Report on the bank". Incredibly, no reason was offered for this refusal.

"We found it regrettable and unacceptable for the BoG to deny shareholders access to the OA Report even as the contents were being widely disseminated to discredit uniBank and instigate public contempt and opprobrium against the bank, especially when no opportunity had been provided to the shareholders to respond to any purported finding by the OA," uniBank shareholders said.

"A very disturbing aspect of the KPMG/OA's report was information given to the media and the general public that uniBank's shareholders had granted themselves huge loans and advances. On 20 August, the shareholders wrote to Nii Amanor Dodoo and KPMG requesting for supporting schedules and all relevant documentation that would enable them [the shareholders] to independently verify, validate and confirm balances reported by KPMG. Unfortunately, such supporting schedules and relevant documentation are yet to be received by the shareholders."

On August 31, an entire month after the contents of the AO's Report had been discussed by the media to discredit the

uniBank shareholders, the BoG finally sent an official copy to the shareholders, informing them that "the Official Administrator has now finalised the report and investigations have commenced. We can therefore now make a copy of the report available to you".

The implication of this is that the report used to revoke uniBank's license on August 1, 2018 was only a draft report. This is

July 2017 was only seven months after President Akufo-Addo's government took office. Thirteen months later, uniBank was dead and buried. This terrible tale shows what the poisonous effects of dirty politics can do if it is allowed to become the dominant factor that determines the survival or extinction of banks in the country.

proved by the cover letter dated July 13, 2018, that the Official Administrator attached to the Report. It clearly stated: "This Report has been prepared primarily from information and data extracted and verified to the extent possible from the financial records and other relevant information maintained by the bank, pursuant to the scope of work agreed in our engagement letter dated 20 March 2018.

"The Report has also been prepared from the Bank's documents reviewed by us as well as information obtained from interviews conducted with relevant stakeholders.

"Our work was limited to the requirements of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) Section 114(5) and we have not carried out procedures that would constitute an audit in accordance with International Standards on Auditing.

"As stated in our engagement letter, unless otherwise stated in our Report, we have not sought to verify information contained herein or performed procedures necessary to enable us to express an audit opinion on any of the financial or non-financial information contained in this Report. Accordingly, we cannot and do not express an audit (or similar) opinion on the information contained in this Report.

"We have not obtained formal confirmations from employees of the Bank that they

have made available to us all significant information relevant to our Report which they have knowledge of. Accordingly, we are unable to determine the extent to which information and explanations provided to us are complete and accurate and the Report should be read in that context.

"Please note that our work does not include a full assessment of matters of legal interpretation and regulatory compliance. We, therefore, recommend that you refer these matters to your legal advisors for more detailed evaluation and advice, if needed. [Signed by Nii Amanor Dodoo, for KPMG Official Administrator]."

Lies told to IMF

Two years after their bank was unjustifiably liquidated, the uniBank shareholders are still quite upset by what they call "the deliberate misinformation that has been fed to the IMF on the circumstances that led to the collapse of the bank" by the Ministry of Finance and the BoG. "This has obviously denied the Ghanaian public, the international community and respected institutions such as the International Monetary Fund (IMF), and the World Bank Group of unbiased but valuable information to arrive at informed conclusions on the central bank's action," say the shareholders.

According to them, the misinformation has led to the IMF making statements about uniBank that contain "grave inaccuracies". Specifically, they point to the following IMF statement included in its March 7, 2019, report on Ghana: "...Onsite inspections conducted by the BoG in late 2017 and early 2018 highlighted further under-provisioning in some institutions – among others resulting in the appointment of an official administrator at uniBank (one of Ghana's largest banks). By early July, it had become clear that prudential reports for uniBank were largely inaccurate and that the bank had, in fact, become deeply insolvent. Given the absence of credible rehabilitation prospects, the BoG decided to resolve the bank in August 2018..."

The shareholders say the above statement did not give an accurate account of how the central bank conducted its supervisory functions in respect of uniBank between July 2017 and August 1, 2018, when the bank's license was revoked.

"Sadly, yet expectedly, the BoG's biased view on uniBank became the narrative in the public space and that view subsequently formed the basis of statements and conclusions by reputable persons and institutions on the bank," the shareholders explain.

"As much as the shareholders share the



Finance Minister Ken Ofori-Atta (right) and Information Minister Kojo Opong Nkrumah at a press conference in Accra. Ofori Atta has much to answer for regarding uniBank's collapse.

view that the implementation of the roadmap met some challenges, they are deeply worried about how the BoG unfairly misrepresented uniBank to the IMF, which ultimately formed the basis of the unsubstantiated comments by the Fund.

"The shareholders hold the position, and strongly so, that the steps taken by the BoG during the roadmap implementation exercise were meant to run the bank into insolvency to help achieve an agenda to collapse it. For the avoidance of doubt, the shareholders state again that their bank, as at 31 July 2017, had CAR of 10.7%, total paid up capital of GH¢422.10m, and total equity of GH¢500m. This was the position after the AQR update was completed and shareholders injected the required capital. UniBank was therefore SOLVENT as at 31 July 2017," a point the shareholders want to make very clear.

Conclusion

July 2017 was only seven months after President Akufo-Addo's government took office. Thirteen months later, uniBank was dead and buried. This terrible tale shows what the poisonous effects of dirty politics can do if it is allowed to become the dominant factor that determines the survival or extinction of banks in the country.

This is poignantly illustrated in how little the government needed to capitalize the Consolidated Bank of Ghana (CBG): A mere GH¢450m, according to the BOG. Yet the government, quasi-government entities, the Ministry of Finance and the Bank of Ghana itself owed uniBank nearly GH¢1 billion, which, had it been paid by the government and its other entities under the normal course of lawful governance, would surely have allowed uniBank to survive. In

fact, uniBank would then have had twice as much capital as CBG on the day that the new bank was incorporated.

But Finance Minister Ofori-Atta let dirty politics rule his thinking, and no matter what entreaties the uniBank shareholders and management made to him to pay up the government's indebtedness to the bank, he did not do it and thus allowed uniBank to go under.

The multimillion-dollar question begging for an answer is: Why would the government not pay off its indebtedness to uniBank when it was that same government, acting now through the Ministry of Finance and the Bank of Ghana, that used the alleged insolvency of uniBank to collapse the bank? Of course there is no answer that will be acceptable or honest, just as sure as the fact that any nation run in this way will not have a prosperous future. ■

UniBank shareholders: We did nothing wrong

The closer one looks at the events that led to the revocation of uniBank's license, the more one sees the fingerprints of the Bank of Ghana as it strove mightily to bring uniBank crashing down by any means necessary. Here, uniBank shareholders give a blow-by-blow analysis of the reasons that the Bank of Ghana used in collapsing their bank.



On 20 March 2018, the Bank of Ghana (BoG) put uniBank under official administration. The BoG gave the following spurious reasons for their decision, and as shareholders we are obliged to respond as follows:

BoG's Reason 1

That uniBank Ghana Limited has been faced with severe insolvency and liquidity challenges over the past two years, with persistent clearing deficits resulting in extensive reliance on the Bank of Ghana's Emergency Liquidity Assistance (ELA) instrument since 2015. As a result, BoG is heavily exposed to uniBank to the tune of GH¢2.2 billion, of which GH¢1.6 billion is unsecured.

Response:

The BoG's statement above does not give the exact solvency and liquidity position of uniBank at the time the Official Administrator arrived on 20 March 2018.

As of 20 March 2017, the BoG was exposed to uniBank to the tune of GH¢2.2 billion of which GH¢1.6 billion was unsecured. However, the following liquid assets in favor of uniBank were enough to cover the unsecured exposure of GH¢1.6 billion:

- On 14 February 2018, the BoG informed uniBank that 'the Ministry of Finance (MoF) on 7 February 2018 agreed to use their outstanding indebtedness to

you in respect of IPCs amounting to GH¢428,817,961.06 to offset part of the unsecured portion of your obligation to the Bank of Ghana'. This was not mentioned in the BoG's press release withdrawing uniBank's licence on 31 August 2018.

- Again, on 2 March 2018, uniBank, in a letter to the BoG's Banking Supervision Department (BSD), advised that the 'entire Government IPCs amounting to GH¢955,586,421.39 should be applied to set off part of the unsecured portion of the Emergency Liquidity Support (ELP)'. This was also not mentioned by the BoG Governor when withdrawing uniBank's licence.

- In the same letter dated 2 March 2018, uniBank also advised that 'in addition, [apply] our assigned securities of GH¢618,235,718.00 and foreign exchange balance of GH¢105,503,659.88 towards the settlement of our liquidity support. This will result in an outstanding liquidity support of GH¢385,187,200.73'. This was also not mentioned in the BoG press release withdrawing uniBank's licence.

- On 29 November 2017, Belstar Consortium conveyed their decision to the Bank of Ghana to be allowed to sell off their entire shares in the Agricultural Development Bank (ADB) worth over GH¢700 million to inject this amount into uniBank. As at 20 March 2018, this application was still waiting for the BoG's approval.

It is clear that the Bank of Ghana's approval for GH¢700 million to be injected into uniBank could have cleared all the unsecured BoG's exposure to uniBank and the bank would have registered a positive balance of GH¢315 million in the books of the central bank.

BoG's Reason 2

That uniBank also faces a significant capital shortfall. On 20 March 2017, BoG directed uniBank, per a letter, to submit a capital plan and resolve its significant undercapitalisation within 180 days from the date of the letter in accordance with Section 106(1) of the Banks and SDIs Act, 2016 (Act 930). Since then, uniBank's Capital Adequacy Ratio (CAR) has rather deteriorated into negative from September 2017, and in a much more distressed condition with CAR of negative 24.02% and capital deficit of GH¢1.18 billion as at December 2017.

Response:

After the Assets Quality Review (AQR) update results were known, uniBank's shareholders injected the required capital, thus by 31 July 2017 uniBank had the highest minimum paid-up capital in the whole banking industry of Ghana. It stood at GH¢370.13 million. On the same 31 July 2017, uniBank also had Capital Adequacy Ratio (CAR) of 10.70%, total paid-up capital

of GH¢422.10 million, and total equity of GH¢500 million. All these were activated within 180 days of BoG's 20 March 2017 letter, and in accordance with Section 106(1) of Act 930.

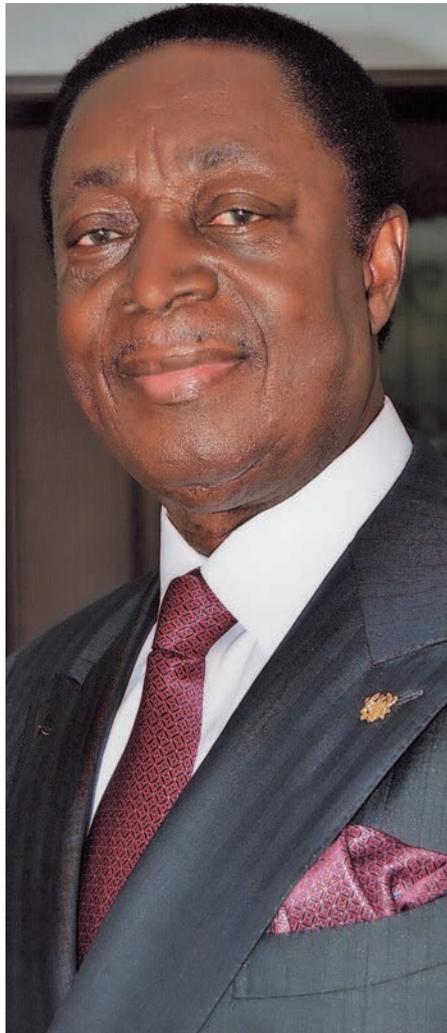
Between 15 August and 31 December 2017 however, the BSD conducted unprecedented and unplanned on-site inspections outside the normal annual on-site examination which had already been conducted between 15 May and 21 June 2017. During the unplanned and inexplicable on-site inspections, the BSD made huge provisions on uniBank's loan book.

In addition to the normal annual on-site inspection, which all banks go through once a year, uniBank underwent four inspections (three additional surprise and unplanned inspections between 15 August and 31 December 2017). It appeared that uniBank had been singled out for this special treatment. In fact, these monthly provisioning of the bank's credit facilities, including government, quasi-government, and even Bank of Ghana exposures was the driving force behind the deterioration of uniBank's CAR into negatives from September 2017.

Notwithstanding these strained conditions under which uniBank operated, the CAR improved remarkably between November and December 2017 when it registered positive 5.20% as shareholders injected additional capital of GH¢60 million before the end of 2017. Unfortunately, the BSD did not appear to feel comfortable with this performance and was determined to find a reason to return the CAR into negative. This was our thinking because in the BSD's letter to uniBank on 28 February 2018, BoG indicated that even though the bank's CAR had improved to positive 5.2%, the BSD had noted that between September and December 2017, uniBank's gross loans increased by GH¢760.67 million.

UniBank's management explained that the GH¢760.67 million was not a growth in the credit portfolio but was due to a software problem which had been already resolved. The BSD did not agree with the management's explanation and they therefore impaired the whopping figure of GH¢760.67 million instantly without notifying the uniBank Board of Directors or the shareholders.

This arbitrary impairment sent uniBank, in the words of the BoG Governor, "into a much more distressed condition with CAR of negative 24.02% and a capital deficit of GH¢1.18 billion as a December 2017". UniBank's shareholders expressed very serious concerns about what appeared to be a predetermined action by the BoG to bring the bank down.



Dr. Kwabena Duffuor has received support from his fellow shareholders who insist that they did nothing wrong in the collapse of uniBank.

It is recalled that in the BoG's 28 February 2018 letter, the BSD had indicated that there had been a remarkable performance between November and December 2017 when uniBank's shareholders injected an additional GH¢60 million into the bank, sending the CAR upwards to 5.20% despite heavy loan provisions made between August and December 2017. Our view is that the BSD did not feel comfortable with this position, hence the arbitrary impairment of the GH¢760.67 million which raised the capital deficit from negative GH¢400 million to negative GH¢1.18 billion.

The shareholders submit here without any doubt that the BSD, realising that

there had been remarkable performance between November and December 2017, as they themselves confirmed, and realising again that the shareholders were capable of managing the capital deficit of about GH¢400 million, decided to impair the GH¢760.67 million in order to make it difficult for the shareholders to restore the bank to regulatory compliance and required capital liquidity levels. We find the BoG's discretion in this matter very regrettable.

The BoG's impairment of the GH¢760,675,826.23 on the basis of the claim that this was from the granting of new loans between September and December 2017, and this misinformation conveyed to the media by the Governor, were unreasonable acts by the central bank contrary to Articles 23 and 296 of the Constitution of the Republic of Ghana. These acts, we believe, were designed to put uniBank out of business and wipe out the investments made by its shareholders.

BoG's Reason 3

That, this notwithstanding, the bank has continued to increase its asset base (granting new loans to clients) to GH¢6.1 billion in December 2017 from GH¢4.9 billion in September – amidst increasingly poor loan asset quality. The bank's gross loans increased by GH¢760.67 million within the same period. As a result, its non-performing loans (NPLs) have remained high, further eroding the capital base of the bank and presenting liquidity challenges.

Response:

In the BSD's letter dated 28 February 2018, it indicated that they had noted 'an increase of GH¢760,675,826.23 in gross loans from the September 2017 position of GH¢3,337,574,219.77 to GH¢4,098,250,046.00 recorded in December 2017 in spite of the directive from the Bank of Ghana to uniBank to cease granting new loans and advances both funded and non-funded except fully-cash-secured credit facilities (refer to our letter dated 17 March 2016 referenced BSD/104/2016)'.

It was this purported increase of GH¢760.67 million in the loan book between September and December 2017 which the BSD instantly impaired and pushed the bank's CAR from positive 5.20% to negative 24.02%. The BSD's letter clearly stated that the gross loans stood at GH¢3,337,574,219.77 as at September 2017 and GH¢4,098,250,046.00 at December 2017.

However, when the Governor was announcing the appointment of the Official Administrator on 20 March 2018, he stated that uniBank's assets base (granting new loans to clients) increased from GH¢4.9

billion in September 2017 to GH¢6.1 billion in December 2017. The Governor's statement contradicted the BSD letter sent to uniBank on 28 February 2018 which stated that the gross loans jumped from GH¢3,337,574,219.77 in September 2017 to GH¢4,098,250,046.00 in December 2017. Considering the fact that the two statements were issued within a month's interval, we believe that such contradiction could have been avoided if care had been exercised. UniBank's loan book could not have been GH¢6.1 billion in December 2017. If the loan book alone was GH¢6.1 billion, then what was the size of the balance sheet at the end of 2017?

BoG's Reason 4

That, the reserve ratio (a measure of liquidity) has remained consistently below 1% since October 2017 compared to the regulatory minimum of 10%, resulting in a constant liquidity shortfall, and continued reliance on the BoG's Emergency Liquidity Assistance facility.

Response:

It is difficult for the shareholders to agree to the above statement. This is because, as of 31 July 2017, uniBank had a Capital Adequacy Ratio (CAR) of 10.70%, total paid-up capital of GH¢422.10 million, and total equity of GH¢500 million. Therefore, it was the unusual and unplanned monthly auditing and downgrading by the BoG's Banking Supervision Department (BSD) that brought the CAR to this level.

We recall that the arbitrary, inexplicable, unplanned and well beyond the normal annual on-site inspections were vehemently rejected by uniBank's Board of Directors in their letter to the BSD dated 18 January 2018. The Board of Directors copied the letter to the Governors of the Bank of Ghana. On 30 January 2018, the head of the BSD responded to uniBank's Board of Directors, explaining that the BSD took those steps because "after the completion of the AQR exercise in March 2017, it was determined that uniBank was significantly undercapitalized with Capital Adequacy Ratio (CAR) of 4.71%".

Indeed, this statement has exposed the regulator. It suggests that the roadmap implementation towards the restoration of uniBank to the regulatory and capital liquid levels was based on wrong information. In sum, the whole capital restoration program implemented by the BoG in respect to uniBank was based on the wrong premise.

Was the BSD not aware that:

- That as of 31 July 2017, uniBank's CAR was 10.70%?
- That uniBank had a minimum paid-up

capital of GH¢370.13 million and it was the highest minimum paid-up capital in the whole banking industry of Ghana?

(c) What was really the motive of the regulator in the statement that uniBank's Capital Adequacy Ratio (CAR) in March 2017 was 4.71%, when it was a well-known fact that the CAR had improved through the injection of capital by the shareholders and that this had been recorded in the books of the central bank?

● Had the central bank not recorded in its 23 November 2017 Monetary Policy Committee (MPC) document that 'three banks – UBG, GCB and ZBG – will be able to raise the required minimum unimpaired paid-up capital of GH¢400 million by December 2018 once their respective income surplus accounts are capitalised'?

The shareholders would like to emphasize at this stage that uniBank was not a loss-making institution until the BSD began their inexplicable on-site monthly auditing and downgrading of the same credit facilities, including government and quasi-government exposures. This unusual behavior of the regulator, including downgrading their own BoG exposures, sent the wrong signals to the market and began to undermine public confidence, thus making uniBank struggle to function under extremely difficult conditions starting on 15 August 2017.

Those conditions were worsened when the government was unable to pay the already validated Interim Payment Certificates (IPCs), worth over GH¢800 million, to improve uniBank's liquidity. It is noted that on 22 June 2018, three months after the Official Administrator (OA) had taken over the management of uniBank, he requested the Ministry of Finance to pay the receivables totaling GH¢868,973,599.16 as at 31 May 2018. The OA received a non-committal response from the Ministry on 12 July 2018. By the time the BoG withdrew uniBank's licence on 31 August 2018, the Ministry of Finance still had not paid the receivables requested by the OA.

It was under such difficult conditions that uniBank sought liquidity support from the BoG at an interest rate of 26% per annum against uniBank's own security at the BoG in the form of Treasury Bills which attracted an interest rate of 14% per annum. Thus, even though the BoG's Emergency Liquidity Assistance (ELA) provided liquidity to uniBank, it was very expensive and therefore did not impact positively on the bank's profitability and solvency.

BoG's Reason 5

That, in line with these developments, BoG's Banking Supervision Department

has reached the conclusion that uniBank is currently insolvent under Section 123 (4) of the Banks and SDI Act, 2016 (Act 930), and in breach of all its key prudential regulatory requirements. Despite persistent pleas for extension over the past year, the shareholders have failed to restore the bank to regulatory capital and liquidity levels. The bank's current situation reflects its poor corporate governance and risk management practices that rendered the bank vulnerable to macro-economic shocks.

Response:

The above conclusion reached by the BoG's Banking Supervision Department was very unfair and unfortunate. It would have been helpful if the BSD had explained carefully and systematically how within just four months:

● UniBank's total paid-up capital of GH¢422.10 million as at 31 July 2017 could be wiped out completely by December 2017.

● The BSD could make a provision of GH¢1338.9 million outside the normal annual on-site inspection?

● If the BSD found the provisions made during the annual on-site inspection inadequate, why did they not convey this to the uniBank Board of Directors to explain why the BoG felt the need to make three more on-site inspections in the space of three months?

● Was it correct when the BSD indicated in its conclusion that 'despite persistent pleas for extension over the past years, the shareholders had failed to restore the bank to regulatory capital and liquidity levels'? What was the motive behind this statement when the BoG's own document of 23 November 2017 had clearly stated that uniBank had the highest minimum paid-up capital of GH¢370.13 million in the whole Ghanaian banking industry?

● Moreover, at the time the BSD was making those huge provisions of the uniBank loan book between August and December 2017, did the shareholders not inject additional capital of GH¢60 million into the bank? This is clearly documented in the BoG's MPC document of 23 November 2017.

We therefore reject outright the conclusion reached by the BSD because the MPC document confirms that:

(a) UniBank was not one of the 'three banks whose liquid assets or volatile funds were less than the prudential limit of 10% at the end of October 2017'.

(b) UniBank was among the 'four banks whose capital levels were increased between July and October 2017'. In fact, uniBank had the highest capital injection of GH¢60 million within this period.



Former Second Deputy Governor Dr. Asiama: UniBank could have been saved

Dr. Johnson Asiama, the former Second Deputy Governor of the Bank of Ghana, provides an insider's view to how the Bank of Ghana treated uniBank and describes just how terrible the repercussions of revoking their license have been.

To understand the depth of the rough treatment meted out to uniBank by the Bank of Ghana, one has to turn to Dr. Johnson Asiama, Second Deputy Governor of the Bank of Ghana at the time.

On January 16, 2019, Dr. Asiama, recently resigned, told a stunned nation that contrary to insinuations broadcast by radio and TV – insinuations driven by the ruling New Patriotic Party – that his resignation was in connection with a ponzi-like gold racket run by Menzgold that had bilked the savings of thousands of Ghanaian depositors, his resignation was in fact demanded by President Nana Akufo-Addo, via Finance Minister Ken Ofori-Atta.

“I was called and asked to resign from office by the Finance Minister, Hon. Ken Ofori-Atta. And the reason he gave me that day was that the president wanted to appoint his own person in my place. It never had anything to do with Menzgold whatsoever. The rest is history”, Dr. Asiama explained at the time.

An economist with an extensive career experience at the Bank of Ghana over 20 years, Dr. Asiama was appointed Second Deputy Governor in April 2016 to replace Dr. Abdul-Nashiru Issahaku who had been promoted to the position of Governor of the central bank. Until his new appointment, Dr. Asiama was the Assistant



Dr. Johnson Asiama, the man Akufo-Addo asked for his resignation because the president wanted his own person in Asiama's place.

Director of the Bank's Economics Department, where he coordinated the work of the Monetary Policy Committee.

Dr. Asiama holds a Ph.D. in Economics from the University of Southampton, UK, and an M.Phil. in Economics from the University of Ghana. He joined the Bank of Ghana in 1996 and rose swiftly through the ranks, serving in various departments such as Banking Supervision, Research, and Financial Markets.

Between 2010 and 2013 he went regional, serving as Director of the Macroeconomic Management Department of the West African Institute for Financial and Economic Management in Lagos, Nigeria, where he designed and managed the capacity building programs for the staff of central banks, ministries of finance, and other public sector institutions across the West African sub-region.

Dr. Asiama's resignation from the Bank of Ghana came just 9 months after his former boss, Dr. Issahaku, was forced to resign as Governor by President Akufo-Addo's government purely on political grounds.

In a recent statement, Dr. Asiama went into some detail about the treatment that the Bank of Ghana and Ministry of Finance gave to uniBank prior to the bank losing its license in August 2018. He made the following clarifications about uniBank:

“ We were informed in early 2016 that uniBank was experiencing persistent liquidity crisis and hence was borrowing heavily daily on the interbank market. [In its] first application for liquidity support in 2016, uniBank informed us that they were experiencing large withdrawals from key institutions such as COCOBOD, VRA,

EDC, DATABANK, etc. According to the letter, COCOBOD was withdrawing over GH¢400 million while it also had to finance [an] outstanding VRA facility of about US\$100 million, etc.

On the other hand, we had information that uniBank had a number of government and government-related receivables total-

ing over GH¢1.3 billion, on account of its large exposure to the energy and construction sectors. In particular, we had information that they were exposed to the Ministry of Finance, Road Fund, GETFUND, COCOBOD, BDCs, other government contractors, etc.

Indeed, [an] Assets Quality Review had

also revealed that uniBank was among 4 banks that had significant exposures to State Owned Enterprises (SOEs) and Bulk Oil Distribution Companies (BDCs) in the energy sector. UniBank and these other banks were thus borrowing heavily daily from other commercial banks and needed BoG's liquidity support (ELA) to keep them in operation.

UniBank in particular had financed a lot of government projects since 2015, especially in the energy and construction sectors. Total liquidity support from the Bank of Ghana for example, increased steadily from GH¢200 million at the end of 2015 to over GH¢2.2 billion by the end of 2017. We were optimistic because the ESLA [Energy Sector Levy Act] payments to banks had then started, and hence sure that the situation would improve by end-2016.

At the time, uniBank's total exposure to these two sectors was reported to be more than GH¢1.3 billion, and hence, the delay in payment was having a severe impact on the bank.

Specifically, somewhere around June 2016, we noticed that uniBank's primary reserves ratio had suddenly declined sharply compared to the required prudential limit of 9%. The situation continued for a couple of weeks, and we instructed the head of BSD [Banking Supervision Department] to monitor the liquidity position. Unfortunately, BSD only attributed it to heavy interbank withdrawals.

However, the Assets Quality Review (AQR) exercise did not suggest that uniBank was irredeemably insolvent, and hence we deemed it a typical liquidity problem. I actually tasked the head of BSD at a point to check whether the earlier liquidity support was not being misapplied, but nothing was reported. BSD only attributed it to early redemptions and heavy interbank withdrawals.

UniBank subsequently came to discuss a request for additional ELA to meet the surge in withdrawals. However, they had ELA which was yet to mature. Naturally, the existing ELA had to be paid-off first before any additional ELA could be considered. The other difficulty was that uniBank did not have adequate Treasury bills as collateral to back a new request, and granting unsecured ELA was being discontinued. On the other hand, we were concerned that the liquidity difficulties could result in daily clearing failures that would have systemic implications for the entire banking industry.

We therefore invited uniBank and asked them to explore the interbank money market more aggressively for liquidity, since a



number of banks had secured liquidity support (due to the energy related difficulties that confronted the entire banking industry at the time) and if their liquidity situation improved may be able to lend to them. UniBank subsequently came back that UMB [Universal Merchant Bank] was willing. Fortunately, UMB had adequate Treasury bill investments to use as collateral and hence a request for support could be considered.

Exploring options as possible collateral for the borrowing on the part of uniBank, we knew they were to receive about GH¢330 million in ESLA and also government receivables in excess of around GH¢900 million at the time. Given that these payments would always be made

through their settlement accounts with BoG, we were comfortable that we had something to hold on to as collateral. Indeed, this was consistent with the Assessment Criteria for Liquidity Support, which was approved by the Bank of Ghana Board.

This was why under the circumstances (and faced with the potential danger a non-action would entail), we decided to facilitate the interbank trading by supporting UMB so that they lend interbank to uniBank. If we did not do so, uniBank could have started failing daily clearing and we would still have to give them overnight liquidity support (uncollateralised) which would have systemic consequences anyway. This could pose a financial stability risk for the entire industry given that uniBank was



Bank of Ghana, which allowed itself to be used to kill one of Ghana's leading indigenous banks, uniBank.

regarded as systemically important.

At the same time, the DKM [Diamond Micro Finance Ltd.] crisis had also reached a stage where BoG had to intervene. The Bank of Ghana Board approved to pay the liquidation costs earlier so that the liquidator, Registrar General's Department, could address the issues. However, by August 2016, the DKM issue had become a national security problem as some depositors were reportedly committing suicide in Brong Ahafo, etc. It is estimated that nearly 50 individuals committed suicide in the Brong

Ahafo region alone before our intervention.

Our regional staff in Sunyani were also sending constant SOS messages to us that their lives were in danger. Customers of DKM were threatening to attack them, to the extent that they had to take off their uniforms outside the Bank premises in Sunyani. Meanwhile, the flagbearer of the minority party had also just declared in Sunyani that he would refund all deposits to DKM customers if elected.

The Bank of Ghana Board was briefed and they gave us the go ahead to assist the liquidator, who had estimated that if about GH¢150 million could be advanced initially, they would be able to pay off all those who had deposits less than GH¢10,000. These constituted about 90 percent of all DKM customers and hence the agitation could be contained entirely. Indeed, these are the payments alluded to by the Finance Minister in the budget statement.

A Memorandum of Understanding was established between BoG and Ministry of Finance (signed by the Minister of Finance, Hon. Seth Terkper and the Governor, Dr. Abdul-Nashiru Issahaku) in line with Section 6(1-3) of the Bank of Ghana Act 2002, Act 612. In line with the MOU, outstanding advances made to the Registrar General for payments to DKM customers could be treated as government indebtedness and treated as provided in the above section.

UMB was chosen to work with GCB (given its wide branch network) as the paying bank. This was how come payments to DKM customers were started around November 2016 and which has helped to calm the situation up to now.

The Term Sheet was therefore negotiated between BoG technical staff and UMB, covering both the transaction for uniBank and also that for the Registrar General (the Official Liquidator for DKM). The email correspondence is available for perusal. It was nothing I took personal interest in.

The term sheet was signed around end-September 2016 and the uniBank facility was to mature by end-December 2016.

We were comfortable with this arrangement because uniBank did not show any sign of insolvency at the time. Since BoG had also taken over all their Treasury bill holdings to collateralise earlier borrowing from the Treasury Department, uniBank could also not access the interbank money market. [Because of] the signs of liquidity stress, [uniBank] had begun an aggressive deposit mobilisation exercise by opening about 15 branches at the same time.

Besides, they started [a] road-show for a 10-year Medium Term Note (MTN) which we had approved. EDC (the investment wing of Ecobank) was underwriting this

deal which was expected to yield about GH¢650 million. UniBank told us they wanted to use the proceeds to pay off their short-term liabilities (especially the BoG ELA) because of the high interest rates.

On the GH¢150 million for the Registrar General, interest rate was agreed at 20% but was deferred with a tenor of 12 months. UMB had a service fee of 2.5% on amounts disbursed. Incidentally, thanks to the relatively high interest income from ELA in 2016, the Bank of Ghana was able to absorb all the amounts disbursed to DKM customers in its 2016 accounts. This means that any remaining undisbursed amounts with UMB would have to be paid directly to the government when the liquidation process ends.

Our attention was drawn around end-January 2017 that uniBank had paid back GH¢150 million out of the GH¢300 million granted them, but continued to service the facility. This was not strange because it was usual for banks to ask for some roll-overs upon maturity. We therefore summoned them to discuss the issue, and they explained that the MTN road-show had to be truncated due to election related uncertainties, but were hopeful to pay off the remaining GH¢150 million by end-January. They were expecting that government related exposures would be paid to them early enough to help lessen the liquidity pressures.

Unfortunately, by end-February 2017, we were informed again that uniBank had not paid back the GH¢150 million remaining although they continued to service interest on the facility.

Upon assumption of office by the new Governor, [Dr. Ernest Addison] and with this development in mind, I prompted him on the need to get the Minister of Finance [Ken Ofori-Atta] to pay uniBank at least some part of their claims on the government.

The Minister of Finance was actually invited to the Bank, based on my promptings to discuss these payments to uniBank, but he declined suggestions, on the grounds that uniBank had gotten enough support to thrive. Clearly, if at least part of these payments were done at the time, uniBank could have avoided the persistent daily clearing failures that eventually shut them out of the interbank money market.

To conclude, the liquidity support granted to uniBank was meant to help address the persistent liquidity problems as we believed at the time. We only acted to prevent a possible larger crisis that would have impacted negatively on the entire banking industry.



Attorney-General's Office admits: Gov't broke the law on uniBank

When something is not right, it is the righteous duty of men and women of goodwill to call it out as it is. This is what the Attorney-General's Office in Ghana did when it bluntly told President Akufo-Addo's government in a leaked letter dated January 25, 2019, that the "revocation of the licence of uniBank was not based on Section 16 of Act 930" of the banking regulations, and therefore the government's action could not be supported by law. Fifteen months later, the same Attorney-General's Office has made a dramatic U-turn and taken Dr. Kwabena Duffuor and 8 others to court over the uniBank collapse. What changed between the original outspokenness of the Attorney-General's Office regarding uniBank and the current court case? Whose law is the Attorney-General's Office now carrying out?

In January 2019, the Office of the Attorney General and Ministry of Justice of Ghana informed the government of President Nana Akufo-Addo in clear terms that the government itself and certain of its officials have broken the law in the course of revoking the license of one of the most promising indigenous banks in the country, uniBank.

The license of uniBank was revoked on August 1, 2018 by the Bank of Ghana (the nation's central bank) under the watchful eyes of Finance Minister Ken Ofori-Atta. The government claimed that the bank was insolvent and could not be saved. However, the laws applicable to such revocations were blatantly flouted by the Ministry of Finance and the Bank of Ghana (BoG), acting on behalf of the government.

The cavalier manner in which the two government entities and their officials acted in the uniBank matter apparently surprised the Attorney-General's Office when Dr. Kwabena Duffuor II, the CEO of uniBank and son of the bank's majority

shareholder, Dr. Kwabena Duffuor, and two other defendants in a case brought by the defunct bank's receiver, Nii Amanor Doodoo, sent a notice to the Attorney-General (AG) of their intention to join the AG to the case. UniBank officials had earlier sued the government and the receiver for illegally revoking the bank's license.

After the AG's Office examined the documents on the case, the Deputy Attorney-General and Deputy Minister of Justice, Godfred Yeboah Dame, acting on behalf of the Office of the Attorney-General, wrote a damning 11-page letter to Ofori-Atta on January 25, 2019, which got leaked, telling him: "We note that CBG [the Consolidated Bank Ghana] was incorporated on 1 August 2018, and a certificate to commence business was issued to that bank on 2 August 2018. We also observe that selected assets and liabilities of 5 banks were transferred to CBG on 1 August 2018 via a Purchase and Assumption transaction, before the grant of a certificate to commence business.

"Section 27 of the Companies Act, 1963 (Act 179) prohibits a company incorporated

in Ghana from transacting a business until it has satisfied the provisions therein, and has been issued with a certificate to commence business. A violation of this provision constitutes a criminal offence for which the company and every officer of the company shall suffer a penalty prescribed by Section 29 of Act 179. The transfer of selected assets and liabilities of uniBank on 1 August 2018 is business, which CBG was not authorised by law to engage in as at 1 August 2018."

The Attorney-General's Office tore into shreds many of the actions taken by the Ministry of Finance, Bank of Ghana, and KPMG (the Official Administrator/Receiver) against uniBank, and told them: "We have presented these preliminary observations in order for the government to have a proper appreciation of the circumstances of the suit to which the defendants seek to join the Attorney-General, and to enable us determine within the framework of the report prepared by KPMG pursuant to Section 114 of Act 930, the measures and options that may be competently explored."



Attorney General and Minister of Justice, Gloria Akuffo (right), and her deputy, Godfred Yeboah Dame (left), have made a dramatic U-turn after rebuking the government for breaking the law in shutting down uniBank in their January 2019 letter to Finance Minister Ken Ofori-Atta.

The Attorney-General's Office continued: "... Based on the clear language of Section 122(2), any revocation of licence pursuant to a recommendation of the official administrator under Section 122 may be done in accordance with Section 16 of Act 930. It is undeniable that [the] revocation of the licence of uniBank was not based on Section 16 of Act 930, because this would have required compliance with the provisions of that Section which further stipulates the provision of notice in writing to the bank, specification of the proposed action and the grant of at least 30 days opportunity to the bank to make written representation. It therefore cannot be asserted that the termination of official administration was effected in accordance with Section 122 of Act 930.

"It is also not the case that uniBank has been liquidated in accordance with Sections 123 to 139 of Act 930. Liquidation under Sections 123 to 139 is a process involving recourse to the mandatory procedures prescribed to be undertaken by a receiver duly appointed in accordance with Section 123.

It is incontestable that the receiver did not pursue the gamut of mandatorily-prescribed actions in Sections 123 to 139 before the assumption of the selected assets and liabilities of uniBank by CBG."

Court case

Strangely, or maybe not very strangely, despite the damning letter by the Attorney-General's Office clearly telling Ofori-Atta last year that the government was very wrong in breaking the law of the nation in regard to uniBank, the government has still taken Dr. Kwabena Duffuor and 8 others to court, and charged them with multiple counts, including contributing to the collapse of uniBank.

One of Dr. Duffuor's 8 co-defendants, Dr. Johnson Asiama, the former Second Deputy Governor of the Bank of Ghana, faces the charge of "willfully causing financial loss to the Republic," for allegedly approving "the disbursement of GH¢300 million unsecured facility to Universal Merchant Bank Limited for the benefit of

uniBank without following prescribed mandatory statutory conditions."

The other 7 accused persons are Dr. Kwabena Duffuor II; Ekow Nyarko Dadzie-Dennis, the chief operating officer of the bank; Kwadwo Opoku Okoh, the financial control manager; Elsie Dansoa Kyereh, the executive head of corporate banking; Benjamin Ofori, the executive head of credit risk; Jeffery Amon, a Senior Relationship Manager; and Hoda Holdings Limited.

They face various counts of money laundering, fraudulent breach of trust, and conspiracy to commit crime. Appearing in an Accra High Court on February 12, 2020, all of the accused pleaded not guilty to the charges levelled against them.

Interestingly, the Attorney-General, Gloria Akuffo, a relative of the President, was herself in court to lead a team of state lawyers to prosecute the case, despite the 11-page letter written by her Office 15 months ago, and signed on her behalf by her deputy, Yeboah Dame, saying the government got everything wrong on uniBank.

Opposing the AG was Dr. Duffuor's

lawyer, Dr. Dominic Ayine, a former Deputy Attorney-General, who urged the court to dismiss the charges because they were “misconceived, erroneous, and without any legal basis”.

According to Dr. Ayine, by law, the relationship between a banker and a depositor is premised on contract and not trusteeship, and since there is no relationship of trust between the accused and the depositors of the bank, it is wrong for the state to accuse them of a breach of trust.

“This means that by law, no money was entrusted to any of the accused persons,” Dr. Ayine argued, adding that Dr. Duffuor, being a shareholder of uniBank, by law, only owed a fiduciary duty to the bank and not to the depositors.

Therefore, as Section 119 of the Companies Act 2019 (Act 992) says, the remedy for a breach of fiduciary duty of a shareholder is civil liabilities, not criminal liabilities, Dr. Ayine explained.

Turning to the presiding judge, Justice Philip Bright Mensah, Dr. Ayine appealed: “Take a look at the charges and dismiss them.”

But Attorney-General Akuffo disagreed, saying Dr. Ayine’s submissions were premature, thus at the appropriate time the state would respond.

All the accused were granted bail in the sum of GH¢60 million each, with three sureties, two to be justified by way of providing justification of proof of ownership of properties worth the bail sum.

Outside court, Dr. Duffuor’s other lawyer, Kwame Gyan, said: “I have looked at the charges and the facts they are using. Dr. Duffuor’s name shouldn’t have appeared on the charge sheet ... Dr. Duffuor is not a shareholder of Hoda Holdings Limited. He is not involved in the day-to-day management and operations of Hoda or even uniBank. He has only 16% of the shares of uniBank, so the rest of the uniBank shares are held by other shareholders.

“He left the Board of uniBank in 2009 and has not since been part of uniBank or Hoda. He has never been part of Hoda. He was part of uniBank, he left but kept his shares. He is not on the uniBank management board. He is not a director of uniBank.”

Deputy Attorney-General writes

The current court case makes the January 25, 2019 letter written by the Attorney-General’s Office a very poignant one indeed. In fact, looking at the circumstances, the letter, addressed to Finance Minister Ken Ofori-Atta, has become such a revolution-

ary object that it deserves to be quoted here in full. Trying to paraphrase it will not do justice to the vital points the Attorney-General’s Office liberally threw in the face of the Finance Minister and the Governor of Bank of Ghana. So here is the full text of the letter written by Deputy Attorney-General Yeboah Dame on behalf of Gloria Akuffo, the Attorney General:



This Office is in receipt of a Notice of Intention to join the Attorney-General to the suit [Nii Amanor Dodoo vrs Dr. Kwabena Duffuor & 16 others] pending before the Commercial Division of the High Court, Accra.

[Nii Amanor Dodoo], the receiver of uniBank Ghana Ltd (uniBank) appointed by the Bank of Ghana pursuant to Section 123 of the Banks and Specialised Deposit-Taking Institutions Act 2016 (Act 930) instituted the case referred to above, seeking principally, an order for the refund of

“It is beyond dispute that the official administration [that] uniBank was placed under, terminated with the revocation of the licence of that bank and the appointment of a receiver for ‘selected assets and liabilities’. It seems that these actions cannot be supported in terms of Section 122(2) of Act 930.”

the remainder of the sum of GH¢5,712,623,145 and an order for the return/transfer of some 34 properties among other reliefs.

The 8th, 10th, and 14th defendants, ie, Dr. Kwabena Duffuor II, Prof. Newman Kwadwo Kusi and Boatemaa Kakra Duffuor-Nyako, in accordance with Section 10 of the State Proceedings Act 1998 (Act 555), have issued a notice of intention to join the Attorney-General, in pursuance of a counterclaim which seeks to raise issues against the Republic.

Inter alia, the 8th, 10th and 14th defendants counterclaimed for the following:

A declaration that the entire procedure culminating in the purported appointment of KPMG as an Official Administrator is unlawful, illegal, and contrary to the prevailing and acceptable practice and custom of the banking industry and sector.

A declaration that the entire procedure

culminating in the purported appointment of the plaintiff as receiver is unlawful, illegal and contrary to the prevailing and acceptable practice of the banking industry and sector.

A further declaration that the purported expropriation and transfer of uniBank’s ‘good assets’ to the Ghana Consolidated Bank Limited is ineffectual, contrary to law, wholly devoid of legality and therefore ought to be set aside.

The defendants make a number of allegations against the Ministry of Finance and the Bank of Ghana (BoG), particularly, that, the President of Ghana was misled about the relevant facts informing the impugned decisions culminating in the revocation of the licence of uniBank and the appointment of a Receiver.

The 8th, 10th and 14th defendants further allege that had the Government of Ghana been provided with adequate opportunity and information by the Bank of Ghana, it would have been aware that non-discharge of the Government’s indebtedness in excess of Gh¢1,400,000,000 contributed to the dire situation of uniBank.

Upon service of the Notice to sue, this Office by a letter dated 17 December 2018, requested the BoG for documents and information in order to assist us in our opinion. By a letter dated 19 December 2018 signed by the Secretary, the BoG presented documents on the matter, with the exception of the Purchase and Assumption Agreement.

We have examined all the processes and documents so far filed by the various parties in the matter, as well as the documents received from BoG, and find the following facts as irrefutable and fundamental to an opinion on the legal issues arising in the suit:

- An Official Administrator, KPMG, was appointed by the Bank of Ghana for uniBank on 20 March 2018 for a period of 6 months effective [from] the date of announcement (20 March 2018). The mandate of the Official Administrator was stated in the press release by which the decision to appoint was communicated, as, to rehabilitate and return the bank to regulatory compliance and private ownership within a period of 6 months.

- By a letter dated 22 June 2018, the Official Administrator notified the Ministry of Finance of overdue payments from Government and Government-related entities to uniBank as at 31 May 2018, in the sum of GH¢868,973,599.10.

- By a letter dated 12 July 2018, a Deputy Minister for Finance acknowledged receipt of the letter from the Official Administrator and indicated that the

Ministry was validating the numbers with BoG.

● BoG, by a letter dated 1 August 2018, revoked the licence of uniBank.

● On 1 August 2018, a new bank, the Consolidated Bank Ghana Ltd (CBG) was incorporated.

● CBG was issued with a certificate to commence business on 2 August 2018.

● By a press release dated 1 August 2018, BoG announced that it had granted ‘a universal banking license’ to CBG.

● The press release stated further that BoG had transferred selected assets and liabilities of uniBank and 4 other banks to CBG.

● By a letter dated 1 August 2018, BoG appointed Nii Amanor Doodoo of KPMG (previously the official administrator), as the receiver in respect of ‘selected assets and liabilities’ of the 5 banks.

● BoG claimed it had capitalised the CBG with an amount of GH¢450 million for 6 months effective [from] the date of announcement (1 August 2018).

● These actions by BoG were in purported invocation of Section 123 of Act 930 in support of these measures.

On the strength of the foregoing, we make the following preliminary observations on the matter and invite your comments thereon:

● The foundation for the impugned decisions resulting in the appointment of a receiver for uniBank in respect of ‘selected assets and liabilities’ and the transfer of selected assets and liabilities to an assuming bank, CBG, was the initial appointment of an official administrator for the bank under Section 107 of Act 930. In the discharge of its obligations, the official administrator, KPMG, was bound by the provisions of Sections 107 – 122 of Act 930. The validity of actions taken during the period of official administration of uniBank has to be measured against these provisions of the statute.

● Section 114(3) requires an official administrator, not later than 90 days of his appointment, to prepare and deliver to BoG a report on the financial condition and prospects of the bank or specialised deposit-taking institution. This is what KPMG sought to do by its report dated 20 June 2018.

● The statutory report to be prepared under Section 114(3) of Act 930 should indicate: (i) an assessment of the amount of

A copy of the Attorney-General’s January 2019 letter that plainly told the government that it was very wrong in the processes it used to shut down uniBank and note the handwritten warning “keep under wraps”.

assets likely to be realised in a liquidation of the bank, and (ii) a proposal to make the bank carry out corrective measures in the nature of either a capital increase or measures to minimise disruption to depositors and preserve the stability of the bank.

● Section 114(5) also requires an official administrator, KPMG in the instant case,

to promptly provide any additional report or information requested by BoG. We have no information on any such additional report or information requested by the Bank of Ghana, and therefore consider the KPMG report of 20 June 2018 as the report prepared pursuant to Section 114(3).

The measures which KPMG, with the approval of the Bank of Ghana, is authorised to institute in order to ensure capital increase and boost the stability of the bank, consequent on the delivery of its report and on the strength of same, are spelt out in:

● Section 115 – capital increase by existing shareholders.

● Section 116 – recapitalisation by new shareholders.

● Section 117 – mergers, sales and other restructuring like transfer of assets and liabilities to a bridge institution or asset management vehicle established by the government.

● Section 118 – mandatory restricting of liabilities.

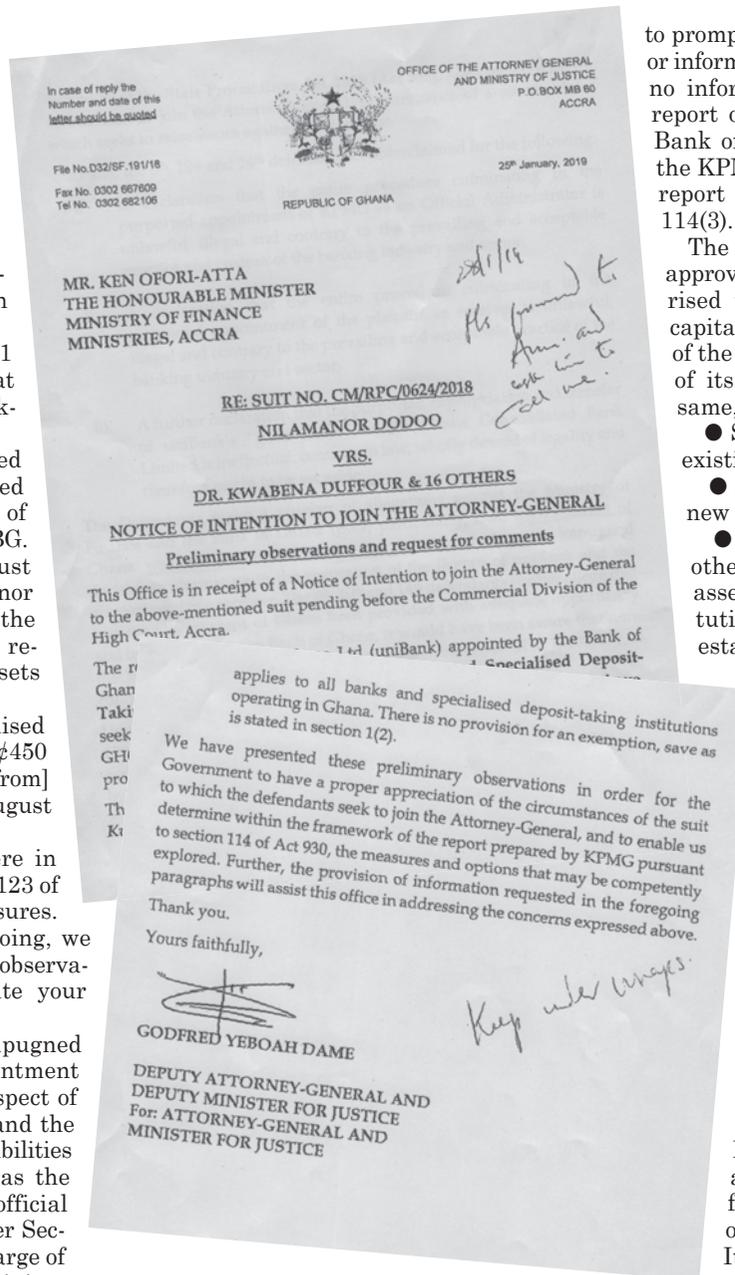
● Section 119 – removal of directors and key management personnel.

It is apparent from the foregoing that revocation of licence of a bank or specialised deposit-taking institution or the appointment of a receiver are not part of the actions that may be taken pursuant to a report prepared under Section 114.

Section 122 of Act 930 enjoins official administration to continue until the expiry of the period specified in the decision to appoint the official administrator. In the instant case, the decision to appoint an official administrator for uniBank, specified the period of administration as 6 months. It is beyond controversy that the period of administration in the uniBank matter terminated by 1 August 2018, undoubtedly earlier than the statutorily prescribed period.

Section 122(2) specifies 4 circumstances within which official administration may validly terminate at an earlier time. This includes situations where the Bank of Ghana determines that the bank or specialised deposit-taking institution cannot be rehabilitated or finds circumstances necessitating a revocation of the licence of the bank under Section 16 or liquidation of the bank in accordance with Sections 123 to 139 of Act 930.

Section 122(6) stipulates that the decision to terminate is to be based on ‘a



recommendation by the official administrator and a detailed report prepared by the official administrator supporting the recommendation'. It is clear from Section 122(6) that the report contemplated by that provision is not the same as the statutory report to be prepared by the official administration within 90 days of assuming office stipulated by Section 114(3).

We have not sighted any report prepared by KPMG other than the report of 20 June 2018, in which a recommendation for an earlier termination of the official administration was made. Please furnish us with any such report if same is available.

The opinion just expressed is anchored on 3 grounds:

● Firstly, a scrutiny of the measures that the law permits an official administrator to take pursuant to the preparation of a report under Section 114(3) – set out in Sections 115, 116, 117, 118 and 119, will show that each of them is prefixed with the words 'on the basis of the report produced under Section 114...'. This is conspicuously not the case for the detailed report required to be prepared by the official administrator under Section 122(6) recommending a termination of the official administration.

● Secondly, it is beyond dispute that the official administration [that] uniBank was placed under, terminated with the revocation of the licence of that bank and the appointment of a receiver for 'selected assets and liabilities'. It seems that these actions cannot be supported in terms of Section 122(2) of Act 930. As observed above, Section 122(2) stipulates 4 circumstances under which official administration may validly terminate at an earlier time, including a situation necessitating a revocation of the licence of the bank under Section 16 or liquidation of the bank in accordance with Sections 123 to 139 of Act 930.

Thus, based on the clear language of Section 122(2), any revocation of licence pursuant to a recommendation of the official administrator under Section 122 may be done in accordance with Section 16 of Act 930. It is undeniable that [the] revocation of the licence of uniBank was not based on Section 16 of Act 930, because this would have required compliance with the provisions of that Section which further stipulates the provision of notice in writing to the bank, specification of the proposed action and the grant of at least 30 days opportunity to the bank to make written representation. It therefore cannot be asserted that the termination of official administration was effected in accordance with Section 122 of Act 930.

● Thirdly, it is also not the case that uniBank has been liquidated in accordance

with Sections 123 to 139 of Act 930. Liquidation under Sections 123 to 139 is a process involving recourse to the mandatory procedures prescribed to be undertaken by a receiver duly appointed in accordance with Section 123. It is incontestable that the receiver did not pursue the gamut of mandatorily-prescribed actions in Sections 123 to 139 before the assumption of the selected assets and liabilities of uniBank by CBG.

Fourteen (14) days after the termination of official administration, the Official Administrator is required by Section 122(7) of Act 930 to submit to the Bank of Ghana a final report and accounting of official administration. There is no evidence on record that this has been done. Please furnish us

It is undeniable that [the] revocation of the licence of uniBank was not based on Section 16 of Act 930.

with information to that effect if same is available. A failure of KPMG to submit a final report on its administration of uniBank may constitute a violation of Act 930.

We observe that by the decision of 1 August 2018, the Bank of Ghana revoked the licence of uniBank Ghana Ltd, appointed Nii Amanor Dodoo of KPMG as the receiver in respect of 'selected assets and liabilities' of 5 banks, including uniBank. BoG directed the execution by the receiver of a Purchase and Assumption transaction with CBG for that bank to acquire and assume deposits, selected assets and liabilities of uniBank and 4 other banks. The appointment of a receiver for uniBank and the 4 other banks was done under Section 123 of Act 930.

Our first comment is that, Section 123(1) empowers BoG to appoint a receiver as a corollary to the determination by the BoG under Section 122(2) of Act 930. It is therefore imperative that the processes required to be undertaken under Section 122 be complied with before an appointment of a receiver under Section 123 may be valid.

Secondly, Section 123(3) provides thus: 'The receiver appointed under Subsection (2) shall take possession and control of the assets and liabilities of the bank or specialised deposit-taking institution.'

The law enjoins a receiver duly appointed under Section 123 to be vested with all assets and liabilities of the bank, and indeed places the receiver in the same position as the shareholders, directors and key man-

agement personnel of the bank.

The receiver is vested with the collective rights and powers of the shareholders, directors and key management personnel of the bank. There is no provision in Act 930 for a receiver appointed pursuant to Section 123, to be vested only with 'selected assets and liabilities', as stated in the letter appointing the receiver. The thrust of that letter together with statements contained in the official public announcements by the Bank of Ghana all dated 1 August 2018 was to transfer the 'good assets and liabilities' to another institution other than the receiver.

The receiver, after complying with the provisions of Section 125 of Act 930, upon appointment, manages the entire assets and liabilities of the bank under receivership and is required to control same through an exercise of the powers stipulated in Sections 129, 130, 131, 132, 135 and 136 of Act 930.

From the decisions taken by BoG on 1 August 2018, it is apparent that the mandatory duties of a receiver, such as publication and registration of notice of receivership and taking of an inventory of the assets and property of uniBank, and publication of same in two daily newspapers of national circulation, were not done before the receiver entered into a Purchase and Assumption transaction with CBG.

It appears that the decision to vest the receiver only with the 'bad loan assets' of uniBank and transfer of the 'good assets and liabilities' to CBG stems from a failure to distinguish the provisions of Section 117 from those of Section 123, which fundamentally differ.

A receiver appointed under Section 123 does not derive his appointment from the power of the official administrator under Section 117 of Act 930. His mandate, powers, and scope of duties are set out in a separate part of Act 930, ie, Sections 123 to 139.

Further, the decision to appoint a receiver was not made under Section 117 and therefore his mandate cannot be limited under Section 117. The compartmentalisation of 'good assets and liabilities' and 'bad loan assets' of uniBank is thus unknown to Section 123 of Act 930.

It is the opinion of this Office that a receiver appointed under Section 123 ought to be given the opportunity to exercise his full powers in relation to the affected bank as set out in Sections 123 to 139 of Act 930, before ultimately pursuing any of the measures which may result in a winding up or disposal of the assets and liabilities of a bank or specialised deposit-



Dr. Kwabena Duffuor and his son, Dr. Kwabena Duffuor II (R), the CEO of the defunct uniBank, at the 2017 edition of the Exclusive Men of the Year (EMY) Africa Awards ceremony in Accra where the senior Duffuor was crowned the Ultimate Man of the Year and recognized as a symbol of greatness. They hope to get uniBank's license back through a judicious pursuit of the law.

taking institution.

We note that CBG was incorporated on 1 August 2018, and a certificate to commence business was issued to that bank on 2 August 2018. We also observe that selected assets and liabilities of the 5 banks were transferred to CBG on 1 August 2018 via a Purchase and Assumption transaction, before the grant of a certificate to commence business.

Section 27 of the Companies Act, 1963 (Act 179) prohibits a company incorporated in Ghana from transacting a business until it has satisfied the provisions therein, and has been issued with a certificate to commence business. A violation of this provision constitutes a criminal offence for which the company and every officer of the company shall suffer a penalty prescribed by Section 29 of Act 179.

The transfer of selected assets and liabilities of uniBank on 1 August 2018 is business, which CBG was not authorised by law

to engage in as at 1 August 2018.

Section 9 of Act 930 also sets out the conditions for the grant of a banking licence to a company incorporated in Ghana to carry out the business of banking. Sections 10 and 12 provide for how a provisional banking licence and final banking licence respectively, may be granted to a bank. Please indicate if these conditions were satisfied by CBG before 1 August 2018, when a Class 1 Banking Licence was issued to CBG. We make this request because Act 930 applies to all banks and specialised deposit-taking institutions operating in Ghana. There is no provision for an exemption, save as is stated in Section 1(2).

We have presented these preliminary observations in order for the government to have a proper appreciation of the circumstances of the suit to which the defendants seek to join the Attorney-General, and to enable us determine within the framework of the report prepared by KPMG pursuant

to Section 114 of Act 930, the measures and options that may be competently explored.

Further, the provision of information requested in the foregoing paragraphs will assist this Office in addressing the concerns expressed above. Thank you.



The letter was signed officially by Godfred Yeboah Dame, Deputy Attorney-General & Deputy Minister for Justice, for the Attorney General and Minister for Justice.

Conclusion

As a capstone to the deceit that went on as outlined in the Attorney-General's letter, on the last page of the letter, on page 11, just across from the Deputy Attorney-General's signature, somebody had minuted: "Keep under wraps".

The Attorney-General's letter is so disarming that it beggars belief that the government still had the stomach to take Dr. Duffuor and the others to court, instead of sorting out the mess the government caused by breaking the law of the country in its pursuit of shutting down uniBank. If the government has the freedom to break the country's laws at will, as seen in the uniBank case, what relief is there for ordinary citizens?

Shouldn't Section 27 of the Companies Act, 1963 (Act 179) be invoked in this matter? As the Attorney-General's letter explained: "Section 27 of the Companies Act, 1963 (Act 179) prohibits a company incorporated in Ghana from transacting a business until it has satisfied the provisions therein, and has been issued with a certificate to commence business.

"A violation of this provision constitutes a criminal offence for which the company and every officer of the company shall suffer a penalty prescribed by Section 29 of Act 179."

As the government and its various agents – including Finance Minister Ofori-Atta, the Bank of Ghana, and CBG – all have apparently openly violated Section 27 of the Companies Act, the big question to this debacle must be whether they will now be man enough to step forward and face the music and the very real consequences that this violation has revealed? And in that process of investigation, the people of Ghana who suffered the catastrophic economic consequences of uniBank's collapse will also want to know why the Office of the Attorney-General has decided to do such an about-face regarding the "illegal" acts that deliberately caused uniBank's demise in the first place. ■