

DEBT RECOVERY UNDER THE AMENDED AMCON ACT AS AMMENDED 2019

The Asset Management Corporation of Nigeria (hereafter AMCON) is a Body established by the Asset Management Corporation of Nigeria (AMCON) Act 2010.

AMCON is empowered by the Act to take over non- performing loans from financial institutions with the overriding aim of protecting shareholders interest in eligible financial institutions. The Act was first amended in 2015 to give additional powers to AMCON.

On the 29th day of July 2019, President Muhammadu Buhari signed the Asset Management Corporation of Nigeria 2019 into law ("the Amended Act"). The Amended Act contains amendments which appear to further increase the powers of AMCON as regards the enforcement of the Act and recovery of debt from debtors.

THE NEW POWERS OF AMCON

- The agency can now place bank account of debtors under surveillance
- AMCON can now establish the coalition of debtors funds at home or in Diaspora
- The Law also empowers AMCON to furnish government ministries, Department & Agencies with a list of debtors and advise government to deny contract awards to such defaulting companies and persons¹.

Section 6 of the Act provides:

The corporation has the powers to:

"Place any bank account or any other account comparable to a bank account of a debtor of an eligible financial institution under surveillance. Obtain access to any computer system component, electronic or mechanical device of any debtor with a view to establishing the location of funds belonging to the debtor. Obtain information in respect of any private account together with all bank financial and commercial records of any debtor of any eligible financial institution, banking secrecy and the protection of customer **confidentiality is not a ground for the denial of the power of the corporation under this section**"

The Act also provides that debt owed to the Corporation will only be forgiven where it has been approved by the Minister of finance acting on the recommendation of the Central Bank of Nigeria where it has been decided that it is in the public interest to forgive any such debt²

The Amended Act 2019 further directs that heads of court shall designate one or more courts for the hearing and determination of civil matters pertaining to the following:

¹ Section 6(6) of the Asset Management Corporation of Nigeria Act 2010 as Amended 2019.

² Section 6(5) of the Asset Management Corporation of Nigeria Act 2010 as Amended 2019.

- a) The acquisition, disposal or realization of eligible bank assets and any collateral or security by which such eligible bank asset is secured in which the corporation or a receiver so appointed by the corporation is a party³
- b) Related to debt owed or alleged to be owed to the Corporation due to its acquisition of an eligible bank asset
- c) To recover debt owed to the Corporation or to realize an eligible bank asset or in relation to any asset or property by which an eligible bank asset is secured

The Act moves on to state that every court designated to hear matters under Section 53(1) shall hear and determine such matters within **6 months** from when the Act becomes effective and for new actions within **6 months from the date of the filing** of such new action⁴.

Finally, the Act directs that the Court of Appeal and The Supreme Court shall hear and determine all appeals emanating from the courts **on an accelerated basis within 60 days and in priority to all other appeals**⁵ and all courts shall issue Special Practice directions for recovery of debt for the Corporation and related matters under Subsection 1⁶.

While the intendment behind the promulgation of the amendments to the Act is commendable, it remains to be seen how workable the amendments introduced would be, having regard to the inherent challenges in our administration of justice system, which challenges cannot disappear by a mere amendment to the AMCON Act.

There may also be concerns of arbitrariness and questions as to whether the Constitutional rights of alleged debtors to a fair hearing will not be breached by the very strict timelines provided in the amended Act.

In conclusion, all the safeguards provided by Section 6 of the Asset Management Corporation of Nigeria act as amended 2019 have been put in place to ensure that AMCON would be in a much better position to ensure the repayment of the very significant exposures to the various financial institutions which effort should in turn, be able to stimulate the economy and provide the needed liquidity for deserving individuals and businesses.

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³ Section 53(A) of the Asset Management Corporation of Nigeria Act 2010 as Amended 2019

⁴ Section 53(3) of the Asset Management Corporation of Nigeria Act 2010 as Amended 2019.

⁵ Section 53(5) (6) of the Asset Management Corporation of Nigeria Act 2010 as Amended 2019.

⁶ Section 53(4) of the Asset Management Corporation of Nigeria Act 2010 as Amended 2019.



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