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AMCON AMENDMENT ACT, 2021: KEY CHANGES INTRODUCED BY THE ACT



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INTRODUCTION

In order to curtail the negative economic effects of non-performing loans in the Nigerian banking sector, the Federal Government of Nigeria through the operation of the Central Bank of Nigeria (the ''CBN''), established the Asset Management Corporation of Nigeria (the ''Corporation'') on July 19, 2010 when the then President, Goodluck Jonathan, signed the AMCON Act No.4, 2010 into law. The purpose of the Corporation was to serve as a key stabilizing tool aimed at reviving the financial system by efficiently resolving the non-performing loan assets of the banks in the Nigerian economy. The AMCON Act of 2010 was subsequently amended in 2015 and 2019.

On November 18, 2021, the President of the Federal Republic of Nigeria signed the new AMCON Amendment Act into law in other to strengthen the Corporation's powers to recover bad loans acquired from commercial banks.

This Newsletter examines the key changes introduced by the AMCON Amendment Act.



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KEY CHANGES INTRODUCED BY THE ACT

Banking Sector Resolution Cost Sinking Fund

Pursuant to the AMCON (Amendment) Act, 2015, a Banking Sector Resolution Cost Fund (the ''Resolution Cost Fund'') was established to provide funding for AMCON from contributions by the CBN and levies on eligible financial institutions. The CBN was to contribute N50,000,000,000.00 (Fifty Billion Naira) annually for ten (10) years starting from 2011 up to the end of the tenor, whilst the eligible financial institutions were to contribute an annual levy in an amount equivalent to 50 basis points (or such higher basis points as may from time to time be determined by the CBN) of its total assets as at the date of its audited financial statements for the immediately preceding financial year, commencing on the 30th of April 2014, and for every year during the tenor.

The AMCON Amendment Act, 2021 seeks to replace the definition of "tenor" by substituting it with a new definition as "a period of 5 years from the expiration of the current tenor but may be extended by a resolution of the National Assembly for such further period as the Corporation may determine with the approval of the Central Bank of Nigeria." By this provision, the tenor of the Resolution Cost Fund



is extended, and the funding of AMCON is to be extended for an additional five (5) years.

The AMCON Amendment Act, 2021 also inserted a new definition of "dissolution date" to mean "a date to be determined by the Board of Directors of the Corporation with the approval of the Central Bank of Nigeria". By this new insertion, the dissolution of AMCON is to be determined by its board of directors with the approval of the CBN.

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Effect Of Acquisition Of Eligible Bank Asset By The Corporation

Pursuant to the AMCON Amendment Act, 2019, upon the acquisition of eligible bank assets (EBA), the Corporation is to become vested with, and acquire legal title to the EBAs and all assets or property tangible or intangible by which such bank asset is secured. The Corporation is vested with the power, to the exclusion of all other creditors, to take possession of, manage, foreclose or sell, transfer, assign or otherwise dispose of the acquired EBA and any tangible or intangible asset or property by which such EBA is secured in full or partial satisfaction of the debt owed to the Corporation.

By the provision of the AMCON Amendment Act, 2021, upon the acquisition of an EBA, the Corporation is to become vested with and acquire title to the EBAs and all assets or property, tangible or intangible, belonging to, traced to and in which the debtor has an interest in, whether or not such assets or property is used as security for the EBA, to the exclusion of all other creditors, to take possession of, manage, foreclose or sell, transfer, assign or otherwise dispose of the acquired EBA and any tangible or intangible asset or property by which such EBA is secured in full or partial satisfaction of the debt owed to the Corporation, notwithstanding that the interest of the debtor in such asset or property is equitable only.

Furthermore, the AMCON Amendment Act, 2021 provides that any certification of sale or certificate of transfer of title executed by the Corporation in the exercise of its powers of acquisition shall constitute a valid registrable instrument under all registration laws applicable in Nigeria, and in all land and corporate registries in the Federation. This provision is to provide the Corporation with an easier, legitimate, and quicker process for disposing of assets of obligors or debtors. Essentially, by this provision the Corporation may take possession, manage, or sell all properties traced to debtors, whether or not such assets or property is used as security/ collateral for obtaining the loan in the issue.

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Commencement of an action at the Special Tribunal

Under the AMCON Amendment Act, 2021, the Corporation may decide to commence debt recovery actions at the Special Tribunal for Enforcement & Recovery of Eligible Loans (the ''Tribunal'') set up under section 102 of the Banks and Other Financial Institution Amendment Act, 2020 (the ''BOFIA 2020''). Such proceedings commenced by the Corporation at the Tribunal are required to adopt the rules and practice directions of the Tribunal.

The expectation is that this provision will help to fast track the delivery of judgments on asset recovery matters, in comparison to where the Corporation is required to approach the traditional courts in which judgments can take years to be delivered.

Registration of Property by the Corporation

The AMCON Amendment Act, 2021 amends section 45(2) of the AMCON Act, which provides that a certificate of the judgment obtained in a proceeding, constitutes a registrable instrument of the title of interests of the Corporation in all land registries in the Federation.

The provision has however been amended by the AMCON Amendment Act to provide that along with a certificate of judgment, any document presented by AMCON evidencing title, whether legal, equitable or traced in a property, constitutes an instrument of the title of the interest of the Corporation in all land registries in the Federation. By this provision, where the Corporation presents any document, which purports to be evidence of title to a property, this would be accepted for the purposes of registration of such title by the Corporation.

Conclusion

The AMCON Amendment Act, 2021 empowers the Corporation to, inter alia, take possession, manage or sell all properties traced to debtors, whether such asset or property is used as security/collateral for obtaining the loan in particular. It also empowers the Corporation to access the special Tribunal established by the BOFIA, 2020 for dealing with financial-related matters. Given the concerns by some stakeholders in the market, the constitutionality of some of the provisions of the Act may be challenged especially with respect to acquisition properties not used as collateral.



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The firm's strong reputation is founded on its unique ability to provide innovative, competent, cost-effective and well-timed solutions to complex legal issues in a manner tailored to the client's individual needs. We adopt a visionary approach to client's service which enables us to anticipate industry challenges.

We are focused on delivering excellent bespoke service to our Clients and towards achieving this objective, we configure teams according to each Client's needs in a system that ensures that personnel with specialist knowledge are always assigned to their areas of specialization.

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