

EXAMINATION OF SOME MAJOR INNOVATIONS INTRODUCED BY THE ASSET MANAGEMENT CORPORATION OF NIGERIA (AMENDMENT) ACT, 2021

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Abstract

The extent to which the financial system supports diversification of a nation's economy depends on whether financial institutions extend loans to non-volatile productive sectors as well as the extent of the loan defaults. A developing nation committed to industrialization must look towards diversifying its economy for inclusive and sustainable growth.¹ The volatility of the oil sector has over time remained the major bane of most oil dependent economies of the world, Nigeria inclusive.² The continuous dwindling in the world's oil price has yet presented us the opportunity to have a rethink on what positive thing non-oil sector loan concentration will do to the attainment of economic diversification. Most countries depending on the oil sector have faced numerous crises. On 19th July, 2010, the then President of Nigeria, President Goodluck Jonathan signed the AMCON Act³ into law. The Asset Management Corporation of Nigeria (AMCON) Act of 2010 was amended in 2015 and 2019 respectively in order to strengthen the corporation's powers to recover bad loans acquired by commercial banks. In this article, we are going to at the major innovations introduced by Asset Management Corporation of Nigeria (Amendment) Act, 2021.

Introduction

Assets management is most critical in the financial service sector especially the banking sector. It is important for a business to manage its assets and to make them work to obtain the best possible returns. To achieve these objectives, asset management embraces all of the processes, tools and data required to manage assets effectively.⁴ Emerging efforts to integrate finance, planning, engineering, personnel and information management to assist agencies in managing assets cost-effectively, constitute what asset management is all about. Through this systematic and coordinated activities and practices, an organization optimally manages its physical assets and their associated performance, risks and expenditures over their lifecycles for the purpose of achieving its organizational strategic plan.⁵ 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 established the Asset Management Corporation of Nigeria.⁶ 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. On 18th November, 2021, the President of the Federal Republic of Nigeria signed the new AMCON (Amendment) Act into law. In this article, we are going to look at the key changes introduced

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¹ Adeoju M. A. 'Impact of Asset Management Corporation in Nigeria (AMCON) On the Securitization in the Nigerian Banking Sector,' Global Research in Accounting Auditing and Business Ethics (GJCRA):2015 (IAGOSs State University, Ojo, Lagos, Nigeria).

² Alashi S. O. Banking Crisis: Causes, Early Warning Signals and Resolutions' CBN (2002) enhancing financial Sector Soundness in Nigeria Abuja.

³ No. 4, 2010.

⁴ Anyanwu C.A.' An Overview of Current Banking Sector Reforms and the Real Sector of the Nigeria Economy. Central Bank of Nigeria CBN Economic and Financial Review Volume 48/4 pp. 31-57 (2010). Banking, 'paper presented at the Annual Bank'. Conference on Development Economics, April 25-26,1996.

⁵ Akpan U.Relevance of the Asset Management Corporation of Nigeria (AMCON)to the Non-Performing Loans of Deposit Money Banks.' International Journal of Economics Business and Finance Vol. 1, N08,pp. 249-2461 (2013), ISSN:2327-8188 (Online) <http://ijebf.com/>. Accessed on 12March, 2023.

⁶ Hereinafter referred to as AMCON or the "Corporation."

by the new Act. The key changes we will consider are the banking sector resolution cost sinking fund, the tenor, dissolution date, acquisition of eligible bank asset by corporation, commencement of an action at the Tribunal and the registration of property by the corporation.

Some major Innovations introduced by Asset Management Corporation of Nigeria (Amendment) Act, 2021

Some of the key changes introduced by the AMCON Amendment Act, 2021 include:

Banking Sector Resolution Cost Sinking Fund

According to the provision of AMCON (Amendment) Act, 2021, a Banking Sector Resolution Cost Fund⁷ was established to provide funding for Asset Management Corporation of Nigeria (AMCON) from contributions by the Central Bank of Nigeria (CBN) and levies on eligible financial institutions. The Central Bank of Nigeria 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 Central Bank of Nigeria) 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.⁸

Tenor

The AMCON Amendment Act, 2021⁹ 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 period.

Dissolution Date

The AMCON Amendment Act, 2021¹⁰ 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 Central Bank of Nigeria.

Acquisition of Eligible Bank Asset by the Corporation

By the provision of the AMCON (Amendment) Act, 2021,¹¹ upon the acquisition of an Eligible Bank Assets,¹² the corporation is to become vested with and acquire title to the Eligible Bank Assets 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 Eligible Bank Assets, to the exclusion of all other creditors, to take possession of, manage, foreclose or sell, transfer, assign or otherwise dispose of the acquire Eligible Bank Assets and any tangible or intangible asset or property by which such Eligible Bank Assets is secured in full or partial satisfaction of the debt owes to the corporation, notwithstanding that the interest of the debtor in such asset or property is equitable only.

⁷ The "Resolution Cost Fund."

⁸ Threshold Attorneys and Solicitors, AMCON Amendment Act, key 2021: key Changes Introduced by the Act. <https://threshold-attorneys.com/content/uploads2022/01/Amcon.pdf>. Accessed on the 22nd February, 2023.

⁹ Section 5 of the AMCON (Amendment) Act, 2021 amended section 61 of the AMCON Act 2010.

¹⁰ Section 5; *ibid*.

¹¹ Section 2; *ibid*.

¹² Hereinafter referred to as "EBA; Section 2 of the AMCON Act.

Furthermore, the AMCON Amendment Act, 2021 provides that any certificate of sale or certificate of transfer of title executed by the corporation in the exercise of its powers of acquisition shall constitute valid registrable instruments 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 obligor or debtors. Essentially, by this provision, the corporation may take possession, manage, or sell properties traced to debtors, whether or not such assets or property is used as security/collateral for obtaining the loan in the issue.

Commencement of an Action at the Tribunal

Under the AMCON Amendment Act, 2021, the corporation may decide to commence debt recovery actions at the special Tribunal for Enforcement and Recovery of Eligible Loans¹³ set up under section 102 of the Banks and Other Financial Institution Amendment Act, 2020.¹⁴ 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,¹⁵ 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 titles by the corporation.

Conclusion

The continuous dwindling in the world's oil price has yet presented us the opportunity to have a rethink on what positive thing non-oil sector loan concentration will do to the attainment of economic diversification. The attainment of this goal has resulted in the amendment of the relevant laws to achieve the required result. Such law is the Asset Management Corporation of Nigeria (AMCON) Act. On 19th July, 2010, the then President of Nigeria, President Goodluck Jonathan signed the AMCON Act into law. The said law was amended in 2015 and 2019 respectively in other to strengthen the corporation's powers to recover bad loans acquired by commercial banks. In this article, we were able to look at the key changes introduced by the said law. We considered the banking sector resolution cost sinking fund, the tenor, dissolution date, acquisition of eligible bank asset by corporation, commencement of an action at the Tribunal and the registration of property by the corporation. The implementation of these changes will go a long way in the attainment of the goals for the establishment of the Asset Management Corporation of Nigeria (AMCON) by the Federal government of Nigeria.

¹³ Hereinafter called the Tribunal.

¹⁴ BOFIA 2020; Section 4 of the AMCON Act.

¹⁵ AMCON Act, 2010.