
**Overview of the Asset
Management Corporation of
Nigeria Act 2010**

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Background and Definition

The Asset Management Corporation of Nigeria Act 2010 ("the Act") received Presidential assent on the July 19 2010. The Act was borne out of the Central Bank of Nigeria (CBN)'s desire to resolve the Nigerian banking crisis. The CBN has noted that the Asset Management Corporation of Nigeria ("AMCON" or "the Corporation") will free up the balance sheet of Nigerian Banks, thus enabling such banks to attract investment.

Section 1(4) of the Act confers independent status on the Corporation, thus separating it from the CBN and Ministry of Finance.

Two terms were severally used in the Act. First, the term "**Eligible Financial Institution**" ("financial Institution") was defined in section 61 to mean a Bank that is duly licensed by the CBN to carry out banking operations in Nigeria under the Banks and Other Financial Institutions Act (BOFIA). The term was also defined to include a bank or other financial institution whose banking license has been revoked by the CBN pursuant to BOFIA. The phrase "whose banking license has been revoked by the CBN pursuant to BOFIA" appears to include banks whose licenses were revoked prior to the Act.

The term "**Eligible Bank Assets**" ("eligible assets" or "assets") on the other hand was defined in the same section 61 to mean assets of eligible financial institutions specified by the Governor of CBN as eligible for acquisition by the Corporation pursuant to section 24 of the Act. Section 24 of the Act empowers the CBN to designate the class of bank assets to be classified as eligible assets. This means that the class of assets that would qualify as eligible assets is still unknown.

Objects of the Corporation

The main objects of the Corporation are to assist eligible financial institutions to efficiently dispose of eligible assets; to efficiently manage



and dispose of eligible assets acquired by the Corporation; and to obtain the best achievable financial returns on eligible assets or other assets which the Corporation may acquire.

Powers of the Corporation

The Act confers a variety of powers on the Corporation including:

- 1. Section 6 Powers:** the Act confers on the Corporation the power to issue bonds and other debt instruments as consideration for acquisition of eligible assets; maintain a portfolio of diverse assets including equities, fixed income bonds and real estate; provide equity capital; borrow or raise money with or without CBN's guarantee, secure its payments and other payments; initiate or participate in enforcements, re-structuring, re-organizations, arrangements or other compromise; enter into contract options or derivatives; draw and accept negotiable instruments; enter into contracts of insurance; accept and enforce any security, guarantee, indemnity or surety; compromise any claim; form or acquire wholly owned subsidiaries or holding companies; establish partnerships, joint ventures or trusts; sell or dispose of its property; and engage consultants, advisers and other service providers on competitive basis from time to time.

The Act confers on the Corporation the power to compromise any claim, forgive or forbear debts or obligations owed to it in respect of a specified class of assets. The Corporation is only allowed to exercise this power with the approval of the Minister of Finance, who in turn will act on the recommendation of the CBN.

- 2. Power to Exercise Right of Set-off:** Section 35(2) of the Act confers on the Corporation the benefit of any right of

set-off over eligible assets where such rights are held by the relevant financial institution against any person whether under a credit facility or any other right. Where such rights exist, the Corporation may require the financial institution concerned to pay an amount equal to the benefit of the right of set-off. The Corporation may exercise such rights notwithstanding that underlying obligation is actual or contingent. Relevant financial institutions may also exercise any right of set-off in trust for the benefit of the Corporation.

- 3. Power to Exercise Rights Originally Vested on Eligible Financial Institutions:** Section 35(4) of the Act grants the Corporation the power to exercise rights originally vested on eligible financial institutions including, power to institute suits to protect, perfect or enforce any security, right, interest, obligation or liability in relation to the assets or realize security; call up guarantees; and participate in any resolution, workout, arrangement and restructuring, reorganization and insolvency proceedings in the same measure as the eligible financial institutions might have participated.
- 4. Power to Redeem and Cancel Debt Securities:** Section 46(1) grants the Corporation the power to redeem and cancel debt securities upon consultation with the Minister of Finance and Governor of the CBN.
- 5. Power to Transfer, Assign, Sell or Dispose of Eligible Assets:** Section 39 of the Act grants the Corporation the power to transfer, assign, sell or otherwise dispose of any acquired eligible assets. The Corporation is empowered to act notwithstanding any contractual requirement for consent, notice or document from any



person; or any enactment prohibiting or restricting such disposal.

6. Special Powers of the Corporation:

The Act confers certain special powers on the Corporation including, power to appoint a receiver for a Debtor Company whose assets has been charged, mortgaged or pledged as security for eligible assets; power to apply to Court by motion ex-parte for an order granting possession of an immovable or movable property belonging to a Debtor or Debtor Company to the Corporation and freezing the account of a Debtor or Debtor Company with an eligible financial institution; and power to apply to Court for a receiving order or winding up order against a Debtor or Debtor Company in breach of an order of Court to pay a liquidated sum to the Corporation for up to 30 or 90 days as the case may be.

Powers of the CBN

The Act confers certain powers on the CBN with respect to the Corporation including:

1. Power to make regulations to give effect to the provisions of the Act.
2. Power to issue guidelines and directions for the performance of the Corporation's functions. It will in that regard supervise and regulate the activities and functions of the Corporation.
3. Power to designate assets as Eligible Assets. The CBN may carry out this function through guidelines. The Corporation is given three months from designation of assets as eligible assets, to voluntarily purchase such assets from financial institutions desirous of disposing them. The CBN may extend the three-month period to a further period not exceeding three years. In addition, the CBN is

empowered to make a regulation prescribing the maximum percentage of eligible assets financial institutions may retain in their books. Consequently, such financial institutions may be required to offer up for sale to the Corporation, assets in excess of the prescribed threshold.

4. Power to recommend persons for appointment to the Board of the Corporation. It may perform this function in conjunction with the Ministry of Finance.
5. Power to determine the value of and the purchase price of eligible assets and provide guidelines for future determinations.
6. The CBN, in conjunction with the Ministry of Finance, may require the Corporation to establish a sinking fund or any such funds which may be used to cover any shortfall required to meet the Corporation's obligations in redeeming debt securities. In the event of dissolution, any remaining assets of the Corporation may be transferred to the Fund. Consequently, the Governor of the CBN will distribute all such remaining assets to subscribers to the capital of the Corporation in proportion to their stake.

Powers of the Ministry of Finance

The Ministry of Finance may in conjunction with the CBN:

1. Issue guidelines and directions for the performance of the Corporation's functions.
2. Recommend persons for appointment to the Board of the Corporation.
3. Require the Corporation to establish a sinking fund or any such funds which may be used to cover any shortfall required to meet the Corporation's



obligations in redeeming debt securities.

Powers of the Nigerian Deposit Insurance Corporation (NDIC)

NDIC may also require the Corporation to acquire certain designated eligible assets. NDIC is however required to act in consultation with the CBN while exercising this power.

Powers of the President of the Federal Republic of Nigeria

The Act further confers certain powers on the President:

1. The President may on joint recommendation of the Ministry of Finance and the CBN, appoint members of the Board of the Corporation. The Senate of the Federal Republic of Nigeria shall confirm all appointments made.
2. The President may also approve bodies other than the Federal Government of Nigeria as subscribers to the increased capital of the Corporation.

Consideration for Acquisition of Eligible Assets

Section 26(1) of the Act specifies that the Corporation will issue a seven-year bond or other debt securities of such tenor as the CBN may prescribe, as consideration for the acquisition of eligible assets. Such bond or other debt securities will be guaranteed by the Federal Government of Nigeria.

In addition, the CBN may approve other forms of consideration to enable the Corporation acquire eligible assets.

Furthermore, section 28 confers on the CBN the power to determine the value of and the purchase price of eligible assets and provide guidelines for future determinations.

Requirements for Acquisition of Eligible Assets

Financial institutions wishing to dispose of eligible assets are required to apply to the Corporation; provide it with information, warranties, representations and indemnities regarding the assets; produce for inspection credit facility documentations, books and records kept in connection with the assets; deliver to the Corporation or its nominee after acquisition, all books, records and title documents concerning the assets; enter into purchase agreements with the Corporation and provide indemnity for losses; and notify the debtor or associated debtor and any guarantor or surety of the debtor or other person required by the Corporation of the acquisition.

Notice to Debtors and Others

Section 33(2) of the Act limits the liability for failure to notify the debtor and other relevant persons of the acquisition of eligible assets on the relevant financial institution. Such failure or delay shall however not invalidate assets acquired by the Corporation.

Effect of Acquisition of Assets

Section 34(1) of the Act vests on the Corporation the power to exercise all rights and powers over acquired assets. This provision is however made subject to the Land Use Act and the provisions of section 36 of the Act on restrictive collateral. In addition, the Corporation will become subject to all the obligations of the eligible financial institution from which the assets were acquired including any obligations to debtors, guarantors, surety or receiver, liquidator, examiner or other concerned persons.

The rights and powers vested by the Act shall take effect notwithstanding any contractual restrictions on assignment or transfer of assets or contract and notwithstanding any requirement for consent, notification, registration, authorization or license. However,



the provision is subject to the Land Use Act and section 36 of the Act.

Eligible Financial Institutions as Bare Trustees

Where there are restrictions on alienation or contract as a matter of law over eligible assets secured in whole or in part by landed property, collateral or other security interests, section 36(1) of the Act requires the financial institution from which the restrictive collateral was acquired to hold such collateral as bare trustee, in trust and for the sole benefit of the Corporation. Where required, the financial institution may realize the restrictive collateral and turn over proceeds received to the Corporation. Such financial institution shall act at the sole direction of the Corporation.

In addition, where previously appointed attorney over the restrictive collateral, the relevant financial institution may continue to act as attorney over the collateral at the sole direction of the Corporation. Where required, it shall appoint the Corporation as receiver or receiver-manager over the collateral. Notwithstanding any restrictions in the collateral or any other law, any such appointment will be deemed valid and effectual.

Tainted Eligible Bank Assets

Section 37(2) categorizes certain loans, credits and other financial accommodations granted to insiders of eligible financial institutions or persons related to or connected with such financial institutions as “tainted eligible bank assets” including, those granted in breach of the rules and regulations of the relevant financial institution; those granted towards the purchase of the shares of the financial institution; those secured against the shares or other securities of the financial institution; those granted in breach of the provisions of the Companies and Allied Matters Act Cap C20, Laws of the Federation of Nigeria, 2004 (CAMA) on financial assistance; those granted in breach of the rules and regulations of the CBN; those granted for purposes of market

manipulation and rigging or for acquisition of shares in breach of the Investment and Securities Act No 29, 2007 (ISA) or any rules and regulations made pursuant to it; and those granted in breach of any law including but not limited to Banking and Company Law.

Section 37(1) stipulates that borrowers or obligors of such tainted assets will not be entitled to any waivers, forbearance or forgiveness of debts in relation to the assets. The provision further grants the Corporation the power to pursue to the fullest extent, all civil and criminal remedies against the borrowers or obligors of such assets.

Section 37(3) defines “**insiders or other related or connected persons**” as including directors, officers or persons with significant shareholding in the eligible financial institution, their spouses, children, their children’s spouses, relations or proxies.

Exclusion from Liability

Section 43(1) of the Act holds the Corporation free from liability arising from any breach of contract, misrepresentation, breach of duty, breach of trust or other legal or equitable wrong committed by eligible financial institutions.

Affected persons may maintain actions in remedy against the relevant financial institution.

Non-recourse to Action

Section 43(3) restricts commencement of action against the Corporation until after the expiration of 30 days notice in writing to the Corporation. The notice will provide details of the alleged wrong, date and remedy sought. The section further requires that no action be commenced or maintained against the Corporation or any of its shareholders, officers and directors for any act done, intended or purported to be done in good faith.

Indemnity for liability or loss



By section 44 eligible financial institutions may be liable to indemnify the Corporation for any liability or loss resulting from error, omission or mis-statement in any information or certificate supplied to the Corporation. Eligible financial institutions may also be liable to indemnify the Corporation for any claim, award, payment or damages to which the Corporation may have been exposed prior the date of transfer of assets.

Exclusion from Registration

Notwithstanding anything to the contrary in any law in force in Nigeria, section 45 excludes the Corporation from any requirement for registration of securities forming part of eligible assets. Nonetheless, the Corporation shall have all the rights and powers of a registered owner over such assets.

Jurisdiction of the Federal High Court

The Act confers on the Federal High Court the jurisdiction to entertain suits arising from its

provisions, including suits for recovery of debts owed to the Corporation or eligible financial institutions. Such suits may be given accelerated hearing.

Conclusion

There is no doubt that the Act made several innovative provisions in law. Some of these provisions are fraught with complexities and may take time for financial institutions and their respective customers to unravel.

This Newsletter provides a brief overview of some of the relevant provisions. No attempt was made to provide a critical review of the provisions of the Act. Industry players are therefore advised to seek independent and detailed legal advice on issues of interest.

Disclaimer: This document serves merely as a note on the recent Asset Management Corporation Act of Nigeria 2010 and is not intended to provide legal advice to any person or group of persons whether natural or corporate regarding the issues discussed herein. All persons desirous of legal advice should therefore contact a lawyer. Aina Blankson LP shall not be liable for any breach or loss resulting from reliance on any part of this newsletter.

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