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NIGERIA GETS NEW AMCON ACT

AUGUST 2019

Nigeria has a new Asset Management Corporation of Nigeria (Amendment) Act, 2019 (AMCON Act) as the President of the Federal Republic of Nigeria signed it into law on 7th August 2019.

The AMCON Act is a measure taken by the government to recover the debt owed to the Asset Management Corporation of Nigeria (Corporation), which is currently set at over N 5,000,000,000,000 (five trillion Naira).

Highlights of the provisions on the recovery of debt in the AMCON Act are:



The Corporation has been granted unfettered access to electronic or mechanical device of any debtor for the purposes of establishing the location of funds belonging to the debtor, with the elimination of confidentiality and banking secrecy as grounds for denial of access to the debtor's records.



The Corporation is to provide a list of recalcitrant debtors to the federal government, ministries, departments and agencies.

The Corporation can also impose an obligation on the federal government, ministries, departments and agencies to seek clearance from the Corporation whenever the debtors on the list, propose to contract with them, or before payments are made to the debtors.

Other provision under the AMCON Act include:



Prohibition of any court of competent jurisdiction from grant of any interim, interlocutory or preservative orders of attachment against the Corporation's fund.



Upon dissolution of the Corporation, unresolved eligible bank assets held by the Corporation are to be transferred by a liquidator to a government agency, or to a third party asset management company for valuable consideration, or any other entity specified by the Central Bank of Nigeria.

Furthermore, existing staff are to be re-deployed to and absorbed into the Central Bank of Nigeria or the Nigeria Deposit Insurance Corporation.



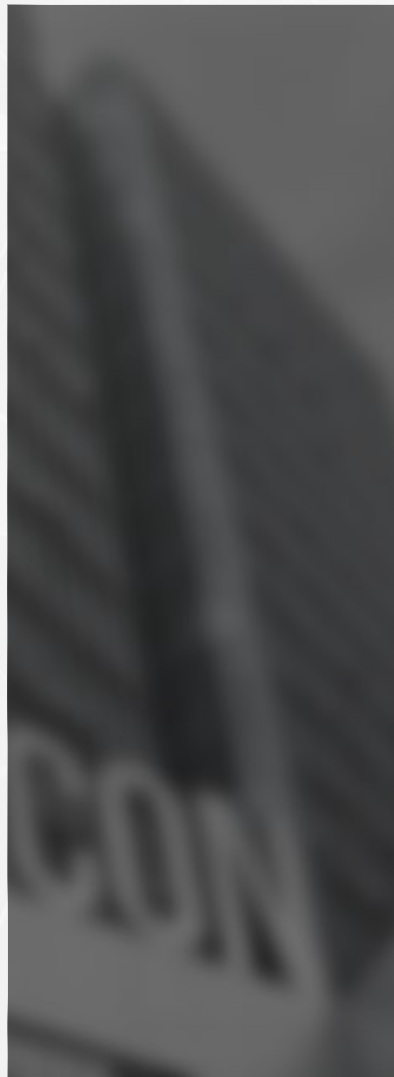
It is hoped that with this new AMCON Act, the Corporation would be able to perform its role of acquiring the non-performing loans from banks and other financial institutions more effectively.

Also, the additional powers granted to the Corporation to trace the assets of debtors may aid the resolution of capital inadequacy challenges, which is necessary to make the Nigerian economy stronger and viable.

However, the new provisions relating to recovery of debt raises concern as it is likely to infringe the right of the debtors to privacy.

It is our view that the objectives of the Corporation do not actually appear to fall within the statutory exceptions provided in the 1999 Constitution which are, “the interest of defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedom or other persons”.

This may be subject to diverse interpretation and it remains to be seen if any of the debtors who may be subjected to these provisions would challenge them in Court.





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