

# NEWSLETTER



## THE ASSET MANAGEMENT CORPORATION OF NIGERIA (AMENDMENT NO. 2) ACT 2019: WHATS NEW?

According to the Chairman of the Asset Management Corporation of Nigeria (AMCON), the debt profile of AMCON was established to be over five trillion Naira, with 20 individuals and companies owing 67 per cent of the said debt. This necessitated the setting up of a task force by the Vice President Prof. Yemi Osinbajo SAN on July 31 2019 with a mandate to devise a strategy to recover the debt owed to the corporation. One of such strategy was the mandate given to the Economic and Financial Crimes Commission, Nigerian Financial Intelligence Unit, the Independent Corrupt Practices Commission and the Ministry of Justice to go after these debtors.

Another strategy to strengthen AMCON's ability to live up to its name was the amendment of the AMCON Act. On the 7th of August, 2019, President Muhammadu Buhari assented to the AMCON (AMENDMENT) Bill 2019. The amendments introduced a lot of far reaching provisions geared towards giving efficacy to the Corporation in her mandate of recovery of debt owed to banks. While these amendments have been introduced, several stakeholders have voiced out criticisms to the innovations under the Act. Some are of the view that some aspects of the amendments are unconstitutional, while others opine that setting a time limit for courts to determine AMCON cases within six months violates the right to fair hearing and will prevent the judges from doing a detailed job.

The focus of this paper therefore is to examine the new changes made to the existing law against the backdrop of these criticisms.

### THE ASSET MANAGEMENT CORPORATION OF NIGERIA (AMCON)

AMCON was established on 19 July, 2010, when the President of the Federal Republic of Nigeria signed the AMCON Act into law. It was created to be a key stabilizing and re-vitalizing tool aimed at reviving the financial system by efficiently recovering the non-performing loan

assets of Nigerian banks.

#### MANDATE OF AMCON

Section 4 of the Act which encapsulates the mandate of the Corporation can be summarized thus: Enforcement and realization of assets owed to banks; management of the proceeds; and redemption of debt securities.

In furtherance of the mandate of the Corporation, it was conferred with special powers, such as powers to appoint a receiver, to take custody of debtor's company, to attach and freeze debtors' bank account, special powers to declare a debtor bankrupt and special powers in winding up proceedings (which provides for a simpler winding up procedure).

#### THE CASE FOR THE 2019 AMENDMENTS

Despite these far reaching powers of AMCON, the Corporation still had challenges recovering debts; about N4.5 Trillion is owed by AMCON to CBN, and the Corporation has in excess of N1.7 Trillion assets under litigation. According to the Corporation, operating at 100% efficiency level, AMCON will still face a daunting challenge in realizing its mandate. As at 2020, only 19% of out of the total debt of N3.7 Trillion has been recovered. The table below gives further insights:

Total value of Eligible Bank Assets	N3.7 TRILLION	100%
Recovered exposure	N716.1Billion	19%
Unrecovered exposure	N3.2Trillion	81%

Realizing that only 19% of the total exposure has been realized, the idea of an amendment to the Act was mooted by stakeholders with a view to enhancing AMCON'S debt recovery capabilities and improve the regime for enforcement. The amendment represents the second one to the AMCON Act. In this recent

#### Contact Us:

##### Abuja Office

Afri-Investment House

Plot 2669 Aguiyi Ironsi Street,

Cadastral Zone 06,

Maitama Abuja

+234 09 291-7347

##### Lagos Office

1B Utomi Airie Avenue,

Off Admiralty Way,

Lekki 1, Lagos.

+234(0) 9059 7777 34

+234(0) 9059 7777 35



Author:

**Abiola Olawole**

(Managing Associate  
at Primera Africa Legal)

amendment, 21 Sections of the previous Act were amended; namely Sections 6, 10, 19, 31, 33, 34, 35, 39, 43, 45, 47, 48, 49, 50, 51, 52, 53, 55, 60 and 61 of the AMCON Act and a new Sections 33A, 50A and 50B were introduced.

## NEW INNOVATIONS INTRODUCED BY THE 2019 AMENDMENTS

The following are the innovations infused in the AMCON Act by the 2019 amendments:

- (1) The corporation is empowered, after securing an Ex parte Order from the Federal High Court, to access funds in any bank belonging to a debtor;
- (2) Prescribing a sunset date for the corporation and empowering the CBN and NDIC to absorb staff of AMCON whenever the Corporation is dissolved;
- (3) Naming and shaming recalcitrant debtors and making contracting with government subject to good standing with AMCON;
- (4) Fast tracking the hearing and determination of AMCON cases: All AMCON cases must be concluded within six months.
- (5) Checkmating debtors' legal gymnastics and exploitation of legal technicalities to frustrate recovery. In this regard, the grant of an order of injunction in favour of the debtor is prohibited by the Act;
- (6) Enhancing AMCON's rights over collateral security from security interest to legal title.

## THE CONCERNS RAISED BY STAKEHOLDERS

Upon amendment of the Act, several calls have been made expressing reservation on certain aspects of the Act.

**Limiting Hearing of Cases To 60 Days:** The Chief Justice of Nigeria (CJN), Justice Ibrahim Muhammad, has faulted some provisions in the amendment to the AMCON Act, particularly the aspect that limits the determination of appeal to 60 days.

The CJN has expressed discomfort with the provision that mandates the Court of Appeal and Supreme Court to hear and determine cases involving AMCON within 60 days. He noted that the 60 days prescribed by the amended Act was too short and limited for the Justices to do a thorough work, as they always carry out intensive research on every matter before arriving at the right decision.

**The New AMCON Act Is Unconstitutional:** some have argued that empowering AMCON to access debtors' funds in other banking institution to offset debt owed is unconstitutional. According to one of the proponent of this view:

"Important to note that many of the provisions of the AMCON (Amendment) Act, 2019, which empowers the agency to gain access into the personal accounts of individuals (debtors), access his/her personal details and even take possession of funds in those accounts autonomously are inconsistent and run at parallel with sections 37 and 44 of the Constitution which seeks to protect the privacy of citizens and deter compulsory acquisition of their movable and immovable property by any

agency, without adequate compensation." It is against the rule of law and is also unconstitutional that an agency could be empowered to arbitrarily access and possess the funds in a debtor's personal account without first securing an appropriate order of a Court of law."

**The New Amendment Will Violate the Privacy Right of Debtors:** It is also posited that the new provisions relating to the recovery of debts raises concerns as it is likely to infringe the right of debtors to privacy.

## THE WRITER'S POSITION

Setting a time limit for conclusion of AMCON cases is a welcome development. Its utility is multipronged because it will be beneficial to the debtor, AMCON, and the Court. This time limit will speed up conclusion of cases in court, free up its congested docket and in turn assist AMCON in achieving its mandate under the enabling law. Where a matter is adjudged in favour of a debtor, such a debtor can quickly put protracted litigation behind him and return to being in "good standing" with government, having been adjudged "debt free" by the judicial process.

It is submitted that the courts have to be alive to their duties by ensuring speedy determination of AMCON cases because of its impact on the financial stability of the country. Already, there is a time limit for the commencement, hearing and conclusion of pre and post-election disputes under the 1999 Constitution. Therefore, setting a time limit for determination of AMCON cases is not out of place. Indeed, the Constitution ought to give primacy to commercial cases as opposed to the present regime where undue attention is given to electoral litigation.

Secondly, it is the position of this writer that the new amendment relating to access to a debtor's bank account is not in any

way unconstitutional as the power to access a debtor's bank account is subject to the authority of the court. Indeed, the ball has to be set in motion by means of an Ex Parte Application to the Federal High Court seeking the indulgence of the Court. Like every application for exercise of a discretion, the party seeking such must adduce cogent evidence that will enable the court exercise such discretion in his favour because the grant of a discretionary relief is founded on settled principles: **most important one being that the court must act judicially and judiciously.**

Also, granting power to access a debtor's account does not amount to a violation of the privacy right as enshrined under Section 37 of the 1999 Constitution because the scope of the privacy right covered by the 1999 constitution is limited to: **"homes, correspondence, telephone conversations and telegraphic communications."**

It should be noted that where a statute compels disclosure of information otherwise protected, a party cannot claim violation of his right. This is the whole essence of the amendment under section 6 of the 2019 amendment relating to accessing a debtor's bank account. A party who acts in compliance with an order of court cannot be accused of breaching a right.

## CONCLUSION

All hands must be on deck to ensure that the laudable mandate of AMCON is realized before the sunset date because this will go a long way in contributing to the economic stability of Nigeria. If the Corporation is able to pay to CBN the over N4.5 Trillion presently owed, the CBN will plough such funds into critical sectors of the economy such as power, infrastructure and healthcare which will in turn contribute to the prosperity of Nigerians.



## Entertainment and Life Story Rights - Fatima Aigbomian

Life Story Rights in popular legal/entertainment parlance refers to the right accruing under a commercial contract which allows a producer to acquire from an individual the right to depict the life of that individual in a book, film or other tangible form for commercial purpose or public

viewing.

Under Nigerian law, there is practically no case law or statute that makes reference to "Life Story Rights" or the right to produce a person's biographical facts in a book form or as



## **CBN to offer single-digit loans to rice farmers**

The Central Bank of Nigeria (CBN) disclosed that it would offer single-digit loan to rice farmers in the Niger Delta area and provide index insurance for participating farmers.

<https://punchng.com/cbn-to-offer-single-digit-loans-to-rice-farmers/>

## **Ex-corporate tackles NYSC, demands N260m for language project**

An accountant, Boboye Olaribigbe, has accused the National Youth Service Corps of refusing to pay him the copyright value of a language project he executed for the scheme more than a decade ago. Olaribigbe is demanding a total of N260,000,000 which includes the copyright value of the project, the cost of each language translated and estimated profit accruable to him.

<https://punchng.com/ex-corporate-tackles-nysc-demands-n260m-for-language-project/>

## **Don't borrow N2tr pension fund, NECA warns govt**

The Nigeria Employers' Consultative Association (NECA) has warned the Federal Government against borrowing about N2 trillion from the pension fund to augment infrastructural development, condemning the move as unnecessary and an attempt to frustrate contributors.

<https://thenationonline.net/dont-borrow-n2tr-pension-fund-neca-warns-govt/>

## **Experts push for collaboration to deepen Non-Interest Finance**

A cross section of experts from Non-Interest Banks, Issuing Houses, Development Finance Institutions, Insurance Companies and Law Firms, among others, have agreed to work together to deliver big ticket Non-Interest Finance deals in the Nigerian market.

<https://www.vanguardngr.com/2020/02/experts-push-for-collaboration-to-deepen-non-interest-finance/>

## **New tax law will boost insurers' profitability and recapitalisation -NIA**

The Finance Act 2020 has solved the issue of excess taxation on company profits to the effect that no further tax will be paid on any undistributed profit that has already been taxed" said the Nigerian Insurers Association.

<https://punchng.com/new-tax-law-boost-insurers-profitability-recapitalisation-nia/>

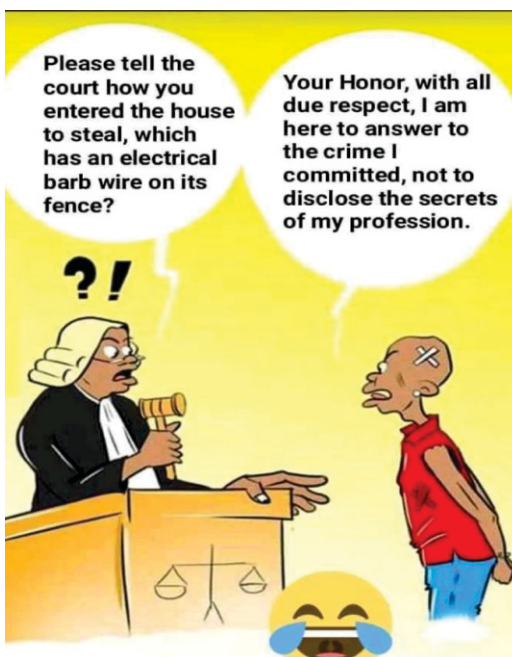
a movie. The concept of "Life Story Right" becomes almost redundant when the person in question is deceased, since his personal rights, which may have given him some rights to his story in certain situations, die with him.

The concept of Life Rights Story is also a bit fuzzy under English Law, and the closest to such concept is Image Rights or Publicity Rights, which refers to a person's or public figure's right to have control over how his image is depicted in public or used for commercial purposes. Image Right was recognised in the English court case involving Wayne Rooney, and the 2013 case of Rihanna v. Topshop.

However, in spite of the dearth of cases or statutes on the legal position on Life Story

Rights under both Nigerian and English law, certain legal risks or rights might arise where a producer makes a movie or an author writes about a person or public figure without obtaining their express permission to do so. Such public figure might sue the producer for defamation, breach of privacy rights, passing off or trademark infringement. Producing a feature story or writing a biographical story about a person in certain circumstances can give rise to law suits where there is a violation of the intellectual property rights of those involved. One of the ways to reduce the possibility of a law suit in this instance is to enter into a commercial contract or what is referred to as a Life

## ***On a Lighter Note***



### **REFERENCE**

1. [https://www.proshareng.com/news/Debtors %20Recovery/PMB-Signs-Info-Law-AMCON-amendment-Act-2019-That-Empowers-It-Acces\\$-Financial-Details-Of-Debtors/46521](https://www.proshareng.com/news/Debtors%20Recovery/PMB-Signs-Info-Law-AMCON-amendment-Act-2019-That-Empowers-It-Acces$-Financial-Details-Of-Debtors/46521).
2. Section 4 of AMCON Act.
3. Leading this group is Chief Mike Ozekhome SAN.
4. English High Court Case of Proactive Sports Management Ltd v. 1) Wayne Rooney, 2) Coleen Rooney (formerly McLoughlin), 3) Stoneygate 48 Limited, 4) Speed 9849 Limited. [2010] EWHC 1807 (QB)
5. [2013] EWHC 2310 (Ch)
6. <https://thenationonline.net/cjn-faults-amended-amcon-act-2/>
7. Chief Mike Ozekhome SAN; <https://www.newtelegraphng.com/new-amcon-act-is-unconstitutional-ozekhome-other-lawyers/>
8. Section 53(3), (5) and (6) of the Asset Management Corporation of Nigeria (amendment No.2) Act 2019.
9. Section 285(5), (6) and (7), (9) and Section 285(14) of the 1999 Constitution (Fourth Alteration) Act.

### **Editor-in-Chief:**

**Fatima Aigbomian**

### **Editorial Board :**

**Nonso Nkamuke**

**Hannatu Babatunde**

**Kiadum Nwakoh**

### **Associate Editors:**

**Tosin Amusan**

**Priscilla Babudoh**

*Disclaimer: The content of this Newsletter does not constitute legal advice. Should you have any questions regarding the issues discussed, please send an email to [iaye@primeraal.com](mailto:iaye@primeraal.com) or [uamah@primeraal.com](mailto:uamah@primeraal.com) to your contact at Primera Africa Legal*