# ASSET MANAGEMENT CORPORATION OF NIGERIA (AMENDMENT NO.2) ACT, 2019

## EXPLANATORY MEMORANDUM

This Act amends the Asset Management Corporation of Nigeria Act, No. 4, 2010 to give the Corporation additional functions and increase the members of the Board.

# ASSET MANAGEMENT CORPORATION OF NIGERIA (AMENDMENT NO.2) ACT, 2019

Arrangement of Sections

Section:

ASSET MANAGEMENT CORPORATION OF NIGERIA (AMENDMENT NO.2) ACT, 2019

A Bill

For

**An Act to amend the Asset Management Corporation of Nigeria Act, No. 4, 2010 to give the Corporation additional functions and increase the members of the Board; and for related matters.**

[ ] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria:

1. The Asset Management Corporation of Nigeria Act, No. 4, 2010 (in this Act referred to as the "Principal Act") is amended as set out in this Act. Amendment of the Principal Act.

2. Section 6 of the Principal Act is amended: Amendment of section 6.

(a) in subsection (1), by inserting after paragraph (u), a new paragraph "(ua)":

"(ua) pursuant to an order of the Federal High Court obtained *ex parte*:

(i) place any bank account or any other account comparable to a bank account of a debtor of an eligible financial institution under surveillance,

(ii) obtain access to any computer system component, electronic or mechanical device of any debtor with a view to establishing the location of funds belonging to the debtor, and

(iii) obtain information in respect of any private account together with all bank financial and commercial records of any debtor of any eligible financial institution, banking secrecy, and the protection of customer confidentiality is not a ground for the denial of the power of the Corporation under this section"; and

(b) by inserting after subsection (5), a new subsection "(6)":

"(6) The Corporation shall furnish the Federal Government, Ministries, Departments and Agencies with a list of its recalcitrant debtors and then impose an obligation to seek clearance on the Federal Government, Ministries, Departments and Agencies when the Federal Government, any Ministry, Department or Agency proposes to contract with, or pay, debtors on the list furnished by the Corporation".

3. Section 10 (1) of the Principal Act is amended by: Amendment of section 10.

(a) substituting for paragraph (a), a new paragraph "(a)":

"(a) a part-time Chairman who shall be a Deputy Governor in the Central Bank of Nigeria to be nominated by the Central Bank of Nigeria"; and

(b) inserting after paragraph (d), a new paragraph "(e)":

"(e) the five other non-Executive Directors under paragraph (d) and the part-time Chairman shall each be from a different geopolitical zone".

4. Section 19 of the Principal Act is amended by inserting after subsection (2), new subsections "(3)" – "(5)": Amendment of section 19.

"(3) No enforcement proceedings or execution in respect of a money judgment shall be commenced or issued against the Corporation unless the prior written consent of the Attorney-General of the Federation has been obtained.

(4) All money standing to the credits of the Corporation in any bank account is deemed to be in the custody and control of the Corporation.

(5) Where any proceeding is pending in any court of competent jurisdiction by or against the Corporation, the grant of any interim, interlocutory or preservative order of attachment against the Corporation's funds in any bank is prohibited".

5. Section 31 of the Principal Act is amended by inserting new subsections "(2)" – "(8)":

Amendment of section 31.

"(2) The Corporation may require any eligible financial institution from which it has acquired an eligible bank asset or any director, manager or officer of such eligible financial institution to furnish information and produce documents, books, accounts and records in relation to any eligible bank asset acquired by the Corporation from such eligible financial institution or in relation to the borrower or other obligor connected with such eligible bank asset.

(3) The power conferred on the Corporation by subsection (2) shall be exercisable by the Corporation in respect of all eligible bank assets acquired by the Corporation either before or after subsection (2) comes into effect.

(4) An eligible financial institution which fails to deliver to the Corporation or its nominees any of its books, records and documents of title or execute any instrument as required by subsection (1), any of its directors, managers or officers as may be applicable, who fails to furnish the Corporation any information or produce any document, book, account or record required by the Corporation under subsection (2) in accordance with the requirement of the Corporation and within the time specified by the Corporation shall be severally liable to a fine, payable to the Corporation, of ₦1,000,000.00 and a further ₦50,000.00 for each day that the failure to deliver the books, records and documents of title or execute an instrument or furnish or produce the required information, document, book, account or record continues.

(5) If an eligible financial institution required by subsection (1) to deliver to the Corporation or its nominees any of its books, records and documents of title, or if an eligible financial institution or its director, manager or officer of an eligible financial institution required by the Corporation under subsection (2) to furnish any information or produce any document, book, account or record,

delivers, furnishes or produces to the Corporation any information, document, book, account or record which is false or misleading, the eligible financial institution and its director, manager or officer as may be applicable, are severally liable, in the case of the:

(a) financial institute to a fine of ₦10,000,000.00; and

(b) director manager or officer as may be applicable for a fine of ₦2,000,000.00 payable to the Corporation.

(6) In addition to the fines stipulated in subsections (4) and (5), any director, manager or officer of an eligible financial institution, that fails to furnish to the Corporation any information or produce any document, book, account or record, required by the Corporation under subsection (2) in accordance with the requirement of the Corporation and within the time specified by the Corporation or that delivers, furnishes or produces to the Corporation any information, document, book, account or record which is false, commits an offence and is liable on conviction to imprisonment for six months.

(7) Where the:

(a) eligible financial institution fails to deliver to the Corporation or its nominees any of its books and records and documents of title or execute any instrument as required by subsection (1),

(b) eligible financial institution or a director, manager or officer of an eligible financial institution, as may be applicable, fails to furnish the Corporation any information or produce any document, book, account or record required by the Corporation under subsection (2) in accordance with the requirements of the Corporation and within the time specified by the Corporation,

(c) eligible financial institution which is required by subsection (1) to deliver to the Corporation or its nominees any of its books, records and documents of title or the eligible financial institution or its director, manager or officer, who is required by the Corporation under subsection (2) to furnish any information or produce any document, book, account or record, delivers, furnishes or produces to the Corporation any information, document, book, account or record which is false or misleading, or

(d) Corporation determines that, in its reasonable opinion, the eligible financial institution made, either before or at the time of the acquisition of the eligible bank asset by the Corporation, a material misrepresentation as to the nature and value of the eligible bank asset or any asset or property by which the eligible bank asset is secured,

without prejudice, to the provisions of subsections (4) and (5), the eligible financial institution, shall, at the sole election of the Corporation, exercisable by delivery of a written notice to the eligible financial institution, be liable to refund, immediately to the Corporation, the full purchase price paid by the Corporation to the eligible financial institution for the acquisition of an eligible bank asset together with interest at a rate equivalent to the average of the Federal Government treasury bills interest rate from the date of the acquisition of the eligible bank asset to the date of the full purchase price is repaid, if in relation to an eligible bank asset acquired by the Corporation from the eligible financial institution whether before or after the coming into effect of this Act:

(8) Where an eligible financial institution to which a written notice is delivered under subsection (7) fails or neglects to refund to the Corporation the amount stated in the written notice together with interest as stipulated under subsection (7) within five days from the date of delivery of the written notice, the Central Bank of Nigeria shall, upon

written demand by the Corporation made at any time after the expiration of five days from the delivery of the written notice to the eligible financial institution, cause any account of the eligible financial institution maintained with the Central Bank of Nigeria to be debited immediately with the amount stated in the written notice together with interest and cause the said amount and interest to be paid over to the Corporation immediately"; and

(b) renumbering the section appropriately.

Amendment of section 33.

6. Section 33 (2) of the Principal Act is amended by inserting before the word, "eligible" in line 3, the words, "acquisition of the".

Insertion of a new section "34A".

7. Insert after section 33 of the Principal Act, a new section "33A":

"Acquisition of eligible bank asset not to give rise to cause of action.

"33A. No action or proceedings shall lie, be instituted or maintainable against the Corporation or any of its directors or officers by reason only of the acquisition of an eligible bank asset by the Corporation under this Act, and any action or proceeding already existing shall cease and abate except where the eligible bank asset became vested in the Corporation as specified under this Act".

Substitution for section 34.

8. Substitute for section 34 of the Principal Act, a new section "34":

"Effect of acquisition of eligible bank asset by the Corporation.

Cap. L5, LFN, 2004.

34. (1) Subject to the provisions of the Land Use Act and section 36 of this Act, upon the acquisition of an eligible bank asset by the Corporation, without any other assurance other than the provision of this section, the Corporation shall immediately:

(a) subject to paragraphs (c) (i) and (d), become vested with and acquire legal title to the eligible bank asset and all assets or property tangible or intangible by which such eligible bank asset is secured and be vested with power, to the exclusion of all other creditors, to take possession of, manage, foreclose or sell, transfer, assign or otherwise dispose of the acquired eligible bank asset and any tangible or intangible asset or property by which such eligible bank asset is secured in full or partial satisfaction of the debt owed to the Corporation by reason of the acquisition of the eligible bank asset notwithstanding that the security interest in such asset or property is equitable only;

(b) in relation to an acquired eligible bank asset, the debtor, any guarantor or surety in connection thereto, become entitled, at the option of the Corporation, to exercise, to the exclusion of the eligible financial institution from which the eligible bank asset was acquired or any receiver or liquidator appointed by or at the instance of such eligible financial institution, all the rights and powers conferred on or exercisable by such eligible financial institution or a receiver or liquidator appointed by or at the instance of such eligible financial institution;

(c) upon the vesting of an eligible bank asset, assets and property tangible or intangible in the Corporation by virtue of paragraph (a):

(i) without prejudice to the rights of other secured creditors with a security interest in the assets or property which ranks equally or in priority to that held by the Corporation, be paid out of the proceeds of any realisation or receipts from the management of such assets or property in accordance with the priority ranking of their security interest in such assets or property, and

(ii) operate to extinguish any equity of redemption of the charge in relation to such assets or property;

and

(d) where the Corporation exercises the powers conferred by paragraph (a) in relation to any asset or property by which an eligible bank asset is secured, apply the proceeds of such exercise of power first to pay any secured creditor with a valid prior ranking security interest in the asset or property in respect of which the power is exercised and next pro rata with other secured creditors with security interests that rank equally with the security interest acquired by the Corporation by reason of its acquisition of the eligible bank asset.

(2) Subject to the provisions of the Land Use Act and section 36 of this Act, the vesting of an eligible bank asset in the Corporation and the exercise of power by the Corporation under subsection (1) takes effect notwithstanding the pendency of an action before a court of law in respect of the eligible bank asset." Cap. L5. LFN. 2004.

(3) The provisions of this section are applicable to all eligible bank assets including but not restricted to the assets acquired by the Corporation before May 2015.

(4) Upon the acquisition of rights by the Corporation in an eligible bank asset, the Corporation shall acquire all rights applicable to the assets notwithstanding that only equitable rights are created in the assets and the Corporation is entitled to exercise the powers of a legal estate holder in a charge or legal mortgage.

(5) The power of sale, transfer and disposal conferred upon the Corporation by subsection (1) (a) or by any other provision of this Act is exercisable by private treaty or other disposal method as may be approved by the Board of the Corporation.

(6) No injunction, preservative or restorative or order, interim, interlocutory, perpetual or like order described shall be granted against the Corporation or its directors or officers in any action, suit or proceeding in relation to

the exercise or intended exercise of power by the Corporation under this Act to recover debt owed to the Corporation or otherwise realise an eligible bank asset or any asset or property by which such eligible bank asset is secured and in particular under subsection (1) (a) and section 39 of this Act, and the remedy of any claimant against the Corporation in any such action, suit or proceeding is limited to monetary compensation.

(7) Monetary compensation for the purposes of subsection (6) of this section excludes consequential, aggravated, punitive or exemplary damages.

(8) Without prejudice to the provisions of subsections (1) and (2), the Corporation may direct all eligible financial institution to hold an eligible bank asset or relevant contract deemed vested in, or assigned to the Corporation under subsection (1), and exercise any such right or power in relation thereto, and when so directed, the eligible financial institution shall hold the eligible bank asset and exercise such rights and powers in the relevant contract at the direction or the Corporation for the sole benefit of the Corporation and shall in relation thereto be subject to the duties, obligations and liabilities as nearly as possible corresponding to those of a trustee in relation to the eligible bank assets and any relevant contract deemed assigned under subsection (1).

(9) Any property, money or other pecuniary benefit received by an eligible financial institution in the course of holding any eligible bank asset acquired by the Corporation or any relevant contract relating thereto or in exercising any right under subsection (6) is held as bare trustee, in trust for and for the sole benefit, of the Corporation and is turned over to the Corporation and shall not be taken to be an asset of the eligible financial institution or accounted for as such in the books of the eligible financial institution".

9. Substitute for section 35 of the Principal Act, a new subsection "35" - Substitution for section 35.

"Corporation to have rights of creditors after acquisition of eligible bank asset.

35. (1) After the Corporation has acquired an eligible bank asset and subject to any exclusion stated in the purchase agreement relating to it, the Corporation is entitled to exercise all the rights

and powers in relation to the eligible bank asset and any security connected to the eligible bank asset.

(2) The Corporation is entitled to any right of set-off held by an eligible financial institution against any person whether under the credit facility relating to the eligible bank asset concerned or any other right of set-off and the institution shall pay an amount equal to the benefit of the right of set-off, to the Corporation to meet any obligation of that other person to the Corporation, whether actual or contingent.

(3) The eligible financial institution shall exercise the right of set-off or combination in this section in trust for and only for the benefit of the Corporation.

(4) Without prejudice to the generality of subsections (1) and (2), the Corporation may:

(a) take any action, including court action, that the eligible financial institution could have taken to protect, perfect or enforce any security, right, interest, obligation or liability;

(b) realise any security that the eligible financial could have realised;

(c) call up any guarantee that the eligible financial institution could have called up;

(d) participle to the same extent as the eligible financial institution could have participated in any resolution, workout, programme of arrangement and restructuring, re-organisation or insolvency proceeding in relation to the eligible bank asset; and

(e) exercise any power conferred by any document that forms part of the eligible bank asset of reviewing or amending any term or condition of any part of the eligible bank asset.

(5) Any statute of limitation of a State or Federal Capital Territory or any like statute or rule or practice directions of any court limiting the time within which an action may be commenced does not apply or operate to bar or invalidate any claim brought by the Corporation in respect of an eligible bank asset or brought to recover a debt or enforce any security or obligation of a guarantor or surety in connection with an eligible bank asset.

(6) Where action has already commenced by an eligible financial institution prior to acquisition of the eligible bank asset by the Corporation, the Corporation is, at any time after the acquisition of the eligible bank asset, entitled to:

(a) continue with the action in its name or as a third party entitled to any judgment debt, and any liability in respect of the claim, any associated counterclaim or cross claim for which the assignor of the eligible bank asset is liable; or

(b) discontinue any such pending action relating to the eligible bank asset instituted by the eligible financial institution prior to such acquisition, and such discontinuance by the Corporation shall be without prejudice to its right to commence or cause to be commenced a new action in respect of the same subject matter as that discontinued".

10. Section 39 of the Principal Act is amended by inserting after paragraph (b), a new paragraph "(c)": Amendment of section 39.

"(c) the pendency of any action before a court of law in respect of the eligible bank asset."

11. Section 43 of the Principal Act is amended:

Amendment of section 43.

(a) in subsection (2) by substituting for the figure, "30" before the word, "days, in line 2, the figure, "90"; and

(b) by substituting for subsection (3), a new subsection "(3)":

"(3) If, after the expiration of the 90 days' notice stated in subsection (2), the Corporation has not responded, the party concerned may issue a writ or other originating process against the Corporation provided always that action shall not be commenced or maintained against the Corporation or any of its shareholders, officers and directors for anything done or intended to be done in good faith in the execution of duties, powers and obligations imposed on the Corporation or any of its shareholders, directors or officers".

12. Section 45 of the Principal Act is amended by:

Amendment of section 45.

(a) inserting a new subsection "(2)":

"(2) A certificate of judgment obtained in a proceeding constitutes a registrable instrument of title of the interests of the Corporation in all land registries in the Federation".; and

(b) renumbering the section appropriately.

13. Substitute for section 47 of the Principal Act, a new section "(47)":

Substitution for section 47.

"Dissolution and winding-up of the Corporation.

47. (1) At dissolution date, the Corporation shall stand dissolved and the Corporation's Board of Directors shall appoint, upon such terms as it deems fit, one or more liquidators to wind up the affairs of the Corporation, realise all assets of the Corporation to be dealt with and distributed in accordance with section 48 (2) of this Act

(2) Upon dissolution of the Corporation:

(a) all unresolved eligible bank assets then held by the Corporation shall be transferred by the liquidator or joint liquidators to such government agency, or for valuable consideration, to a third party asset management company or other entity specified by the Central Bank of Nigeria;

(b) all then existing staff of the Corporation shall be re-deployed to and absorbed into the Central Bank of Nigeria or the Nigeria Deposit Insurance Corporation; and

(c) the provisions of section 60R (2)-(6) of this Act, shall apply to this section as if the references therein to the Board of Trustees and the Resolution Cost Fund were respectively references to the Board of the Corporation and the Corporation.

(3) The assets of the Corporation remaining after the redemption of all debt securities and discharge of all payment or repayment obligations shall, at its eventual dissolution, be transferred to the Fund of the Corporation and distributed by the Governor between the subscribers to the capital of the Corporation in proportion to their respective stake in the authorised capital of the Corporation".

14. Substitute for section 48 of the Principal Act, a new section "48":

Substitution for section 48.

"Powers of the Corporation to act as, or appoint, a receiver for a debtor company.

48. (1) The Corporation shall have powers to act as, or appoint, a receiver for a debtor company whose assets have been charged, mortgaged or pledged as security for an eligible bank asset acquired by the Corporation.

(2) A receiver under this Act shall have power to:

(a) realise the assets of the debtor company;

(b) enforce the individual liability of the shareholders and directors of the debtor company;

(c) manage the affairs of the debtor company.

(3) The powers of a receiver, acting under the

provisions of this section, shall be exercisable over all the assets and entire undertaking of the debtor company notwithstanding that only a part of the assets of the debtor company was charged, mortgaged or pledged as security in relation to the eligible bank asset acquired by the Corporation:

(4) Where a receiver under this section elects to manage the affairs of a debtor company or other debtor entity under subsection (2) (c), it shall give notice of its election by publication in at least two newspapers with nationwide circulation.

(5) A receiver under this section that elects to manage the affairs of a debtor company or debtor entity is, on the publication of the notice referred to in subsection (4), entitled to take over the management of the affairs of the debtor company or debtor entity in the name and on behalf of the debtor company or debtor entity for the benefit of the debtor company or debtor entity and the general body of creditors of the debtor company or debtor entity.

(6) A receiver managing the affairs of a debtor company or debtor entity under this section is deemed to be a fiduciary of the debtor company or debtor entity and shall strictly adhere to debt priority ranking prescribed under section 494 of the Company and Allied Matters Acts. Cap. C20, LFN, 2004.

(7) Subject to subsection (9) and upon the publication of the notice of election referred to in subsection (4):

(a) no action, suit or proceedings, including any judgment enforcement proceeding, shall be commenced or maintained against the debtor company or the receiver or in relation to the receiver's management of the affairs of the debtor company, and all claims, actions, suits or proceedings, including judgment enforcement proceedings, against the debtor company or receiver shall stand automatically suspended and stayed for one year from the date of the publication of the notice of election to manage the affairs of the debtor company or such extended period as the Court may grant under subsection (10):

Provided that claims relating to wages and other entitlements of existing staff of the debtor company or debtor entity shall not be suspended or stayed;

(b) no other secured creditor or judgment creditor shall appoint or apply to appoint a receiver or liquidator over any asset or part or the whole undertaking of the debtor company or debtor entity or take any step towards enforcing or realising any security which it may hold over the assets or undertaking of the debtor company or debtor entity or towards enforcing any judgment against the debtor company or debtor entity during the period referred to in paragraph (a) as may be extended by the Court under subsection (1).

(8) A receiver, acting under subsection (2) (c), shall, within 90 days of the publication of the notice referred to in subsection (4), cause to be prepared and submitted to the Corporation a detailed and comprehensive plan for the rehabilitation of the debtor-company or debtor entity.

(9) Where a receiver, acting under subsection (2) (c), fails to comply with the provisions of subsection (8), the provisions of subsection (7) shall cease to apply.

(10) The Court may, upon an *ex-parte* application by a receiver before the expiration of the one year period specified under subsection (7) (a), extend the one year period for a further period of one year if the Court is satisfied that the receiver has, within the initial one year significantly stabilised the affairs of the debtor company or debtor entity and that there is a reasonable prospect that the debtor company or debtor entity can be rehabilitated or restructured for the benefit of all secured creditors of the debtor company or debtor entity.

(11) Subject to subsection (12), a receiver managing the affairs of a debtor company or debtor entity under this section shall manage the debtor company or debtor entity in the interest of the company's creditors as a whole and with the objective of rescuing the company as a going concern or achieving a better result for the company's creditors as a whole than would be likely if the company were wound up.

(12) Notwithstanding the provisions of subsection (11) or any other provision of this Act, a receiver managing the affairs of a debtor company or debtor entity under this section may, where he determines that the objectives in subsection (11) can no longer be achieved:

(a) realise property for the purpose of making a distribution to secured creditors or preferential creditors; and

(b) in the name and on behalf of all the secured creditors of a debtor company, restructure the debtor company by way of a hive down and for this purpose, may transfer the assets of the debtor company over which security exists, up to the value of the indebtedness of the debtor company to all its secured creditors, to a new company incorporated by the receiver for that purpose and to operate or lease the transferred assets through the new company or sell the new company to which the secured assets have been transferred for the benefit of secured creditors whose assets were transferred to the new company as part of the hive down:

Provided that a receiver shall not operate the new company for more than one year from the date of the transfer of the assets of the debtor company over which security exists except with the unanimous approval of all the secured creditors.

(13) Where a receiver managing the affairs of a debtor company elects to undertake a restructuring by way of a hive down, the assets of the debtor company over which security exists which are to be transferred shall be independently valued and, upon transfer to the new company established by the receiver, the new company is deemed to be capitalised to the tune of the value of the transferred assets, and shares in the new company shall be allotted among the secured creditors in proportion to the value of assets over which they hold a security interest taking account of the nature of the security interest and any security interest that may be held by other creditors in the same assets.

(14) Upon the allotment of shares to the secured creditors in the new company in the manner contemplated in subsection (13), the security

interest held by the secured creditors in the assets transferred to the new company, as it relates to the new company, stand discharged and the hitherto secured creditors' only claim on the new company shall be the shares of the new company allotted to each secured creditor in accordance with subsection (13).

(15) No stamp duty or other tax, imposition or fee on share capital, registration of share capital or transfer of assets shall be chargeable on the share capital of a new company incorporated by a receiver under subsection (11) and capitalised under subsection (12) or in relation to the transfer of assets.

(16) Whenever it deems necessary, the Corporation, acting in consultation with other secured creditors of a debtor company or debtor entity being managed by a receiver under this section, may direct such receiver to appoint an advisory committee consisting of at least persons with industry knowledge and expertise in the business being undertaken by the debtor company or debtor entity from among persons to the nominated by the Corporation, to advise the receiver, and the receiver shall appoint the advisory committee within seven days of the directive and regularly consult with, and take account of the advice of, such advisory committee".

15. Substitute for section 49 of the Principal Act, a new section "49" - Substitution for section 49.

"Custody and possession of debtor's property.

49. (1) Where the Corporation has reasonable cause to believe that a debtor or debtor company is the *bona fide* owner of any movable or immovable property, it may apply to the Court, before or at the time of filing of action for debt recovery or other like action or at any time after the filing of action, and before or after the service of the originating process by which such action is commenced on the debtor or debtor company, by motion *ex-parte* for an interlocutory order granting

possession of the property to the Corporation pending the hearing and determination of the debt recovery or other action to abide the decision in such action.

(2) The Corporation shall serve a certified true copy of the order of the Court issued under subsection (1) on the debtor or debtor company.

(3) Notwithstanding anything to the contrary in any enactment, an order made under subsection (1) shall subsist till judgment or a final determination of the action, unless expressly discharged by the Court".

16. Substitute for section 50 of the Principal Act, a new section "50": Substitution for section 50.

"Application for interlocutory freezing order.

50. (1) Where the Corporation has reasonable cause to believe that a debtor or debtor company has funds in any account with any eligible financial institution, it may apply to the Court, before, or at the time of filing of action for debt recovery or other like action or at any time after the filing of action, and before or after the service of the originating process by which such action is commenced on the debtor or debtor company, by motion *ex-parte* for an interlocutory order freezing the debtor or debtor company's account.

(2) Notwithstanding anything to the contrary in any enactment, an order made under subsection (1) shall subsist till judgment or a final determination of the action, unless expressly discharged by the Court".

17. Insert after section 50 of the Principal Act, new sections "50A" – "50B":

Insertion of new sections "50A" – '50B".

"Power to obtain information on debtors.

50A. (1) Notwithstanding anything to the contrary in any enactment, rule of law, banking practice or rule or contractual provision, the Corporation may, for the purposes of recovering any money owed to it by a debtor in pursuance of the Corporation's acquisition of an eligible bank asset, by written notice, require any eligible financial institution to disclose to or furnish to the Corporation, within such time as may be specified in the written notice, details of, and balances in, all accounts (howsoever described) maintained by such debtor with the eligible financial institution, and details of all investments by way of deposits or in financial instruments made by such debtor with or through the eligible financial institution or the bank identification number or other unique identifier of the debtor.

(2) Any eligible financial institution which fails to comply with the requirement of a written notice issued to it by the Corporation under subsection (1) within the time specified in such written notice is liable to a fine, payable to the Corporation, of ₦10,000,000.00 and a further ₦50,000.00 for each day that the failure to comply continues.

(3) A director of an eligible financial institution who fails to comply with the requirement of a written notice issued to him by the Corporation under subsection (1) within the time specified in such written notice, commits an offence and is liable on conviction to three years imprisonment:

Provided that a director of an eligible financial institution commits an offence under this subsection, where such director, within a reasonable time of becoming aware of such written notice, demands the board of eligible financial institution, in writing, that the eligible financial institution shall comply with the requirements of the written notice.

(4) Without prejudice to the provisions of subsection (2), where an eligible financial institution fails to comply with the requirement of a written notice issued to it by the Corporation under subsection (1) within the time specified in such written notice, the Corporation may apply to the Court by motion *ex-parte* for an order compelling such eligible financial institution to immediately comply with the requirement of the written notice and the Court, except it sees good reason to the contrary, shall make an order compelling such eligible financial institution to comply with requirement of the written notice and award against such eligible financial institution costs of at least ₦5,000,000.00 in addition to the fine under subsection (2).

"Concurrence of Corporation as condition for participation of debtors, in government contracts. etc.

50B. (1) Notwithstanding any rule or contractual obligation as to confidentiality, the Corporation may publish, in the national daily or newspaper, a list of debtors that have failed to meet their debt or other repayment obligation to the Corporation in connection with any eligible bank asset acquired by the Corporation.

(2) The Corporation shall furnish a copy of the newspaper in which the list of debtors is published under subsection (1) to all procuring entities:

Provided that all procuring entities are deemed to have notice of the list once published in the newspaper and any failure on the part of the Corporation to furnish a copy of the newspaper to a procuring entity shall not relieve such procuring entity of its obligations under this section:

(3) No procuring entity shall award a contract to, or conduct business with, or make any payment under any existing contract or

business arrangement to any debtor on the list published by the Corporation under subsection (1) without the prior written concurrence of the Corporation, and without satisfying itself of the compliance with any condition to which the concurrence of the Corporation is expressed to be subject by the Corporation.

(4) For the purposes sections 51, 52 and 53 of this Act, the term "debtor" or "debtor company", shall, as may be applicable, include:

(a) the borrower;

(b) all guarantors or sureties of the borrower;

(c) all directors and shareholders of the borrower;

(d) all directors and shareholders of any corporate entity guarantor or surety of the borrower; and

(e) all companies and entities, 50% or more of whose share capital is owned or controlled jointly or otherwise by one of more of the of the persons listed in paragraphs (a) - (d)".

18. Substitute for section 51 of the Principal Act, a new section "51": Substitution for section 51.

"Special powers in bankruptcy proceedings.

51. (1) Where a debtor fails to comply in full, within 90 days, with a written demand notice issued by the Corporation requiring the debtor to pay a liquidated sum to the Corporation which the Corporation certifies on the face of the demand notice as being owed by the debtor to the Corporation in connection with an eligible bank asset acquired by the Corporation, the Court shall, on the application of the Corporation made by way of originating motion, make a receiving order against the debtor, except where, at the hearing of the application, the debtor proves to the satisfaction of the Court that he does not owe any liquidated sum at all to the Corporation or that he has a counter-claim, set-off or cross-demand which equals or exceeds the liquidated sum owed to the Corporation.

(2) A receiving order made under subsection (1) is deemed to have been, and have full effect and force as a receiving order, made under the Bankruptcy Act. Cap. B2, LFN, 2004.

(3) Subject to subsection (1), it is not necessary for the debtor to commit any act of bankruptcy or for the Corporation to file a bankruptcy petition or for any of the conditions precedent for the grant of a receiving order specified under the Bankruptcy Act to be satisfied before the Court grants a receiving order against the debtor. Cap. B2, LFN, 2004.

(4) Notwithstanding the provisions of the Bankruptcy Act, where a receiving order is made against a debtor under this Act, the Court may adjudge the debtor bankrupt. Cap. B2, LFN, 2004.

(5) Where a debtor is adjudged bankrupt under this Act, the Court may, on the application of the Corporation, appoint the official receiver or authorise the Corporation to assume the office of trustee of the property of the debtor.

(6) A trustee appointed under this Act has all the powers of a trustee of an adjudged bankrupt under

the Bankruptcy Act and shall discharge his duties in accordance with that Act. Cap. B2, LFN, 2004.

(7) An act, thing, directive or permission authorised or required to be done or given by the Committee of Inspection or creditors under the Bankruptcy Act may be done or given by the Court on the application of the trustee. Cap. B2, LFN, 2004.

(8) Any person adjudged a bankrupt under this Act is deemed adjudged a bankrupt under the Bankruptcy Act which shall have effect with such modifications as are contained in this Act, and a trustee appointed under this Act may seek the directive of the Court in respect of any act or thing to be done by anyone under the Bankruptcy Act". Cap. B2, LFN, 2004. Cap. B2, LFN, 2004.

19. Substitute for section 52 of the Principal Act, a new section "52" - Substitution for section 52.

"Special powers in winding up proceeding.

52. Where a debtor that is a body corporate fails to comply in full, within 30 days, with a written demand notice issued by the Corporation requiring the body corporate debtor to pay a liquidated sum to the Corporation which the Corporation certifies on the face of the demand notice as being owed by the body corporate debtor to the Corporation in connection with an eligible bank asset acquired by the Corporation, the Court shall, on the application of the Corporation made by way of originating motion, make a winding-up order against the body corporate debtor, except where, at the hearing of the application, the body corporate debtor proves to the satisfaction of the Court that it does not owe any liquidated sum at all to the Corporation or that it has a counter-claim, set-off or cross-demand which equals or exceeds the liquidated sum owed to the Corporation".

20. Substitute for section 53 of the Principal Act, a new section "53": Substitution for section 53.

"Designation of a court to hear matter.

53. (1) The respective heads of Courts shall designate, in their respective jurisdictions, one or more courts exclusively for hearing and determining civil causes or matters:

(a) connected with or pertaining to the acquisition, disposal or realisation of eligible bank assets and any collateral or security by which such eligible bank asset is secured in which the Corporation or a receiver appointed by the Corporation or the eligible financial institution from which the Corporation acquired the eligible bank asset is a party;

(b) relating to debt owed or alleged to be owed to the Corporation by reason of the Corporation's acquisition of an eligible bank asset; or

(c) connected with or pertaining to the exercise or intended exercise of power by the Corporation under this Act to recover debt owed to the Corporation or otherwise realise an eligible bank asset or take enforcement or realisation action in relation to any asset or property by which such eligible bank asset is secured.

(2) The number of courts to be designated under subsection (1) shall be determined by the relevant head of the relevant courts having regard to the volume of such cases then pending or likely to be instituted in the relevant court.

(3) Each court specially designated under subsection (1) shall hear and determine within six months in the case of existing actions, from the date of the coming into effect of this section and in the case of new actions, within six months from the date of filing of such new action.

(4) Each head of court shall issue or cause to be issued special practice directions applicable exclusively to the specially designated courts for the expedited and accelerated hearing and determination of causes and matters before the specially designated courts within the time limit stipulated under subsection (3).

(5) The Court of Appeal shall hear and determine all appeals emanating from the courts specially

designated under subsection (1) on an accelerated basis within 60 days and in priority to all other appeals, and, for this purpose, the President of the Court of Appeal shall issue or cause to be issued special practice directions for the Court of Appeal exclusively for the expedited and accelerated hearing and determination of appeals emanating from the specially designated courts.

(6) The Supreme Court shall hear and determine all appeals emanating from the Court of Appeal in relation to appeals against the Court of Appeal's decisions on appeals to the Court of Appeal from the specially designated courts on an accelerated basis within 60 days and in priority to all other appeals, and, for this purpose, the Chief Justice of Nigeria shall issue or cause to be issued special practice directions for the Supreme Court exclusively for the expedited and accelerated hearing and determination of such appeals.

(7) The grant of stay of proceedings, stay of execution or injunction pending appeal, or leave to appeal in favour of any party other than by the Corporation or a receiver appointed by the Corporation in any matter within the scope of subsection (1) shall:

(a) in the case of stay of proceedings and leave to appeal in respect of interlocutory appeals, be conditional upon the deposit by the applicant of the sum claimed by the Corporation in such action into an interest yielding account in the name of the registry of the relevant court; and

(b) in the case of stay of execution, injunction pending appeal or leave to appeal in respect of a final judgment, be conditional upon the deposit by the applicant of the judgment sum into an interest yielding account in the name of the registry of the relevant court".

21. Substitute for section 55 of the Principal Act, a new section "55": Substitution for section 55.

"Jurisdiction "55. (1) The Federal High Court shall have jurisdiction, to the exclusion of all other courts, to try offences under this Act.

(2) Subject to the provisions of section 174 of the Constitution, offences under this Act may be prosecuted by legal practitioners appointed for that purpose by the Corporation". Constitution, 1999.

22. Section 60 of the Principal Act is amended by inserting a new subsection "(2): Amendment of section 60.

"(2) The Corporation is exempted from paying all taxes, fees, penalties, charges, levies or other like imposts payable to any institution, agency, department or authority of the Federal Government, State Government, Federal Capital Territory, Local Government and Area Councils of the Federal Capital Territory, save income tax by the staff of the Corporation and, value added tax and withholding tax which are payable by the Corporation's obligors".

23. Section 61 of the Principal Act is amended: Amendment of section 61.

(a) by substituting for a definition of the word, "court", a new definition:

"Court" means the Federal High Court, the High Court of a State or the High Court of the Federal Capital Territory or other superior court exercising original jurisdiction as may be applicable, save that for the purposes of sections 49 and 50 (1) of this Act, the "Court" means the Federal High Court".

24. This Act may be cited as the Asset Management Corporation of Nigeria (Amendment No. 2) Act, 2019. Citation.

I, CERTIFY, IN ACCORDANCE WITH SECTION 2 (1) OF THE ACTS AUTHENTICATION ACT CAP. A2, LAWS OF THE FEDERATION OF NIGERIA 2004, THAT THIS IS A TRUE COPY OF THIS BILL PASSED BY BOTH HOUSES OF THE NATIONAL ASSEMBLY.

MOHAMMED ATABA SANI-OMOLORI
CLERK TO THE NATIONAL ASSEMBLY
28th DAY OF JUNE, 2019

**Schedule to the Asset Management Corporation of Nigeria (Amendment No. 2) Bill, 2019**

| SHORT TITLE OF THE BILL | LONG TITLE OF THE BILL | SUMMARY OF THE CONTENTS OF THE BILL | DATE PASSED BY THE SENATE | DATE PASSED BY THE HOUSE OF REPRESENTATIVES |
|---|---|---|---|---|
| Asset Management Corporation of Nigeria (Amendment No. 2) Bill, 2019. | An Act to amend the Asset Management Corporation of Nigeria Act, No. 4, 2010 to give the Corporation additional functions and increase the members of the Board; and for related matters. | This Bill amends the Asset Management Corporation of Nigeria Act, No. 4, 2010 to give the Corporation additional functions and increase the members of the Board. | 28th May, 2019 | 23rd May, 2019 |

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.

**MOHAMMED ATABA SANI-OMOLORI**
**Clerk to the National Assembly**
28th **Day of June, 2019**

**I ASSENT**

**MUHAMMADU BUHARI, GCFR**
**President of the Federal Republic of Nigeria**
29th **Day of ~~June~~ July, 2019**