



THE LEGAL FRAMEWORK FOR DEBT
RECOVERY IN NIGERIA

INTRODUCTION

Development requires financing and this could be at a personal or at a corporate level. This financing could either be equity finance or debt finance.

Debt recovery is an evolutionary kind of financing process in every jurisdiction hence, there is never an end to improving the framework. As a result of this, one jurisdiction borrows from the advances in other jurisdictions in order to make the financial system vibrant. There is no globally unique system and more than the laws, the institutions that operate a debt system are more important than all the statutes.



THE FRAMEWORK FOR DEBT RECOVERY

- The Secured Transactions in Movable Assets Act, 2017.
- Companies and Allied Matters Act (CAMA) 2020
- High Courts Civil Procedure Rules of various States
- Federal High Court (Civil Procedure) Rules, 2019
- Asset Management Corporation of Nigeria Act (as amended), 2019
- Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, CAP F2 LFN, 2004
- Banks and Other Financial Institutions Act (BOFIA) CAP B3. LFN, 2004.
- Lagos State Multi-Door Courthouse Law, 2007



SECURED TRANSACTIONS IN MOVABLE ASSETS ACT, 2017

The Secured Transactions in Moveable Assets Act, 2017 (STMAA) was enacted to facilitate access to credit secured with movable assets, perfect the security interest and aid the realisation of the security.



The STMAA additionally establishes the National Collateral Registry (NCR) for perfection of the security interest. The NCR aids with determining the security right of the borrower and is expected to interface with other registries that record any transaction in movable assets. This is an innovation that aids a centralized registry of all movable assets that can be used as security.



However, this law is not devoid of limitations and challenges. First, the law is applicable only to transactions in movable assets. While such transactions constitute a significant proportion of debt finance in the country, the value of these transactions are usually lower than the value of transactions that are secured by immovable assets. This means that most high value credit transactions are outside the scope of the STMAA.



In addition, the right of creditor to repossess a collateral without recourse to the judicial process could prove problematic.

APPOINTMENT OF RECEIVER UNDER THE COMPANIES AND ALLIED MATTERS ACT (CAMA) 2020

- CAMA empowers a secured creditor to appoint a Receiver or a Receiver/Manager over specific assets of a company or the entire undertaking of a company. The right of appointment of a Receiver can be exercised by a secured Creditor without recourse to court where the debenture securing the debt or other agreement between the company Creditor and the Debtor company provides for any such right. Section 554 of CAMA.
- The appointment of a Receiver provides an effective and expeditious means of debt recovery, and it is commonly deployed by secured Creditors. It is however, only available to secured Creditors against corporate entities.



SUMMARY JUDGEMENT PROCEEDINGS UNDER THE RULES OF HIGH COURT

Summary judgment proceeding is a fast track proceeding under the High Court (Civil Procedure) Rules of the various States which enables a Creditor to obtain judgment without trial where the debt is undisputed, or the Debtor has no viable defence to the claim for repayment.

In Lagos, a Creditor can commence a summary judgement proceeding under Order 13 of High of Court of Lagos State (Civil Procedure) Rules 2019 by filing a writ of summons, statement of claim and accompanying processes, together with a motion for summary judgment supported by an affidavit and a written address. The Creditor is required to depose to the affidavit, stating the grounds of his belief that the Debtor does not have a reasonable defence to his claim, and exhibit all the relevant documents in support of his claim to the affidavit.

THE ASSET MANAGEMENT CORPORATION OF NIGERIA ACT, 2010 (AS AMENDED)

- AMCON was established under the AMCON Act to acquire, manage, and realise eligible debts that have been owed to banks and other financial institutions.
- The extension of AMCON powers to all the property or assets of a Debtor, including assets that do not form part of the security means that AMCON can easily ground the entire business of a Debtor in exercise of its powers. It would appear that while seeking to address the problem of bad debts in the banking sector, the AMCON Act also indirectly punishes the use of debt as a means of financing business operations.

RECOVERY OF DEBT AT THE SPECIAL TRIBUNAL FOR ENFORCEMENT AND RECOVERY OF ELIGIBLE LOANS UNDER THE BANKS AND OTHER FINANCIAL INSTITUTION ACT, 2020.

- This tribunal has the jurisdiction over the recovery of eligible loans and the enforcement of securities/any form of asset that is attached to the loan as provided for in section 115 of the Act. Proceedings of the tribunal does not prevent the right of the bank from approaching a court to recover the debt. Further, Section 122 of the BOFIA empowers the tribunal to grant an injunction to the bank, grant an order of mandamus directing the debtor to perform an act, by an ex-parte order grant custody of security of the debtor etc.
- Although this is an expedient method of recovering bank loans, the jurisdiction of the tribunal is significantly limited. Further, the fact that the validity of the order granted by the tribunal can be challenged in court adds a layer of delay to the debt recovery process.

FAILED BANKS (RECOVERY OF DEBTS) AND FINANCIAL MALPRACTICES IN BANKS ACT

- The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act was enacted to provide for the recovery of debts owed to failed banks and for the trial of offences relating to financial malpractices in banks and other financial institutions. This law also excludes the application of limitation laws to debts owed to failed banks.

LAGOS STATE MULTI-DOOR COURTHOUSE LAW, 2007

- Where a judge before whom a matter is brought believes that the matter ought to be resolved by alternative dispute resolution means, the matter is referred to the LMDC for resolution.
- Parties to a dispute may also approach the LMDC to initiate mediation of their dispute.
- The LMDC provides a less hostile and expeditious means of dispute resolution. This is particularly suitable for debt recovery claims, especially if the parties are business partners who may want to preserve their business relationship. However, in many cases, parties fail to reach an agreement and are referred back to the court. In such cases, the time spent at LMDC becomes an additional delay in the resolution of the dispute.

EXTRA-JUDICIAL MEANS/ SELF HELP

The Police is not empowered by any statutes to recover debts as they are not debt collectors. In the case of *Oceanic Securities Int. Ltd V. Balogun & Ors (2012)LCN/5113(CA)*, the Court of Appeal emphasised that "... the police has no business in enforcement of debt settlements or recovering of civil debts for banks or anybody".

However, in practice, the Police and the EFCC have unfortunately constituted themselves as debt collectors and Creditors commonly resort to these agencies to assist them with debt recovery. The increasing popularity of this unlawful mode of debt recovery is one testament of the shortcomings in the present debt recovery framework.

SELF-HELP

- The Police is not the only means of self help that there is. Creditors adopt very unconventional methods to recover their debts such as calling upon members of the armed forces as well as vigilante groups to intimidate their debtors. Although this is quite unfortunate and illegal, it has proven to be very efficient, and creditors quite frankly, would rather resort to this unconventional method.

SHORTCOMINGS IN THE PRESENT DEBT RECOVERY FRAMEWORK

LACK OF INTEROPERABILITY BETWEEN THE RECOVERY INSTITUTIONS



ENFORCEMENT ISSUES



LACK OF A RELIABLE DATABASE



LACK OF INSTITUTIONAL INNOVATIONS

CONCLUSION/RECOMMENDATIONS

The present debt recovery framework in the country is not fit for purpose and does not inspire confidence in the credit system. The lack of reliable database and credit rating system, and the debilitating delays in the judicial process account significantly for the inadequacies in the debt recovery framework.

Debt finance is essential to economic development. But without an effective recovery framework that guarantees ease of recovery in a manner that also protects the interest of the debtor, we will continue to see an apathy to this financing model. We therefore have a collective responsibility to make this financing model more attractive by reforming the recovery framework.