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Asset Management Corporation of Nigeria Act

Asset Management Corporation of Nigeria (AMCON)

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ASSET MANAGEMENT CORPORATION OF NIGERIA ACT, 2010.

EXPLANATORY MEMORANDUM

This Act seeks to establish the Asset Management Corporation of Nigeria for the purpose of efficiently resolving the non-performing loan assets of banks in Nigeria.

ASSET MANAGEMENT CORPORATION OF NIGERIA ACT, 2010.

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ASSET MANAGEMENT CORPORATION OF NIGERIA ACT, 2010.

A Bill
For

An Act to establish the Asset Management Corporation of Nigeria for the purpose of efficiently resolving the non-performing loan assets of banks in Nigeria; and for related Matters.

[] Commencement

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

PART I — ESTABLISHMENT, ETC. OF THE ASSET MANAGEMENT CORPORATION OF NIGERIA

1. (1) There is established the Asset Management Corporation of Nigeria (in this Act referred to as "the Corporation"). Establishment of the Corporation.
 - (2) The Corporation:
 - (a) shall be a body corporate with a common seal, perpetual succession; and
 - (b) may sue and be sued in its corporate name.
 - (3) Subject to the limitations contained in this Act, the Corporation may acquire, hold and dispose of movable and immovable property for the purpose of its functions and objects.
 - (4) Except as otherwise provided in this Act, the Corporation shall be independent in the discharge of its functions.
2. (1) The authorised capital of the Corporation shall be 10 billion Naira, which shall be fully subscribed to by the Federal Government and held in trust by the Central Bank of Nigeria and the Ministry of Finance incorporated in equal proportion of fifty percent each. Authorised capital.
 - (2) The authorised capital of the Corporation may be increased by such amount as the Board may, from time to time, determine, with the concurrence of the Board of the Central Bank of Nigeria and the approval of the President and shall, when so increased, be subscribed to by the Federal Government and such other subscribers as may be approved by the President on the recommendation of the Central Bank of Nigeria and Ministry of Finance.
 - (3) The authorised capital of the Corporation shall be subject to registration and stamp duties.

3. The Corporation shall have its Head Office in Abuja and may open branches in any part of Nigeria and appoint agents and correspondents as may be approved by the Board.

Head Office of the Corporation.

4. The objects of the Corporation shall be to :

Objects of the Corporation.

- (a) assist eligible financial institutions to efficiently dispose of eligible bank assets in accordance with the provisions of this Act;
- (b) efficiently manage and dispose of eligible bank assets acquired by the Corporation in accordance with the provisions of this Act; and
- (c) obtain the best achievable financial returns on eligible bank assets or other assets acquired by it in pursuance of the provisions of this Act having regard to:
 - (i) the need to protect or otherwise enhance the long-term economic value of those assets,
 - (ii) the cost of acquiring and dealing with those assets,
 - (iii) the Corporation's cost of capital and other costs,
 - (iv) any guidelines or directions issued by the Central Bank of Nigeria in pursuance of the provisions of this Act; and
 - (v) any other factor which the Corporation considers relevant to the achievement of its objects.

5. The functions of the Corporation shall be to :

Functions of the Corporation.

- (a) acquire eligible bank assets from eligible financial institutions in accordance with the provisions of this Act;
- (b) purchase or otherwise invest in eligible equities on such terms and conditions as the Corporation, with the approval of the Board of the Central Bank of Nigeria, may deem fit;
- (c) hold, manage, realise and dispose of eligible bank assets (including the collection of interest, principal and capital due and the taking over of collateral securing such assets) in accordance with the provisions of this Act;

- (d) pay coupons on, and redeem at maturity, bonds and debt securities issued by the Corporation as consideration for the acquisition of eligible bank assets in accordance with the provisions of this Act;
- (e) perform such other functions, directly related to the management or the realisation of eligible bank assets that the Corporation has acquired, including managing and disposing assets acquired with the proceeds derived by the Corporation from managing or disposing of eligible bank assets acquired by it;
- (f) take all steps necessary or expedient to protect, enhance or realise the value of the eligible bank assets that the Corporation has acquired, including:
 - (i) the disposal of eligible bank assets or portfolios of eligible bank assets in the market at the best achievable price,
 - (ii) the securitization or refinancing of portfolios of eligible bank assets, and
 - (iii) holding, realising and disposing of collateral securing eligible bank assets; and
- (g) perform such other activities and carry out such other functions which in the opinion of the Board are necessary, incidental or conducive to the attainment of the objects of the Corporation.

6. (1) The Corporation shall have powers to:

Powers of the Corporation.

- (a) issue bonds or other debt instruments as consideration for the acquisition of eligible bank assets;
- (b) maintain a portfolio of diverse assets including equities, fixed income bonds and real estate;
- (c) provide equity capital on such terms and conditions as the Corporation may deem fit;
- (d) borrow or raise money, with or without the guarantee of the Central Bank of Nigeria (including money in a currency other than the Naira) or secure the payment of money in any manner, including issuing debentures, debenture stocks, bonds, obligations and debt securities of any kind, and charge and secure any instrument so issued by trust deed or otherwise on the undertaking of the Corporation or on any particular property and rights, present or future, of the Corporation or in any other

manner,

- (e) initiate or participate in any enforcement, restructuring, re-organisation, programme of arrangement or other compromise;
- (f) enter into contract options and other derivative financial instruments (including in currencies other than the Naira) for purposes which include :
 - (i) eliminating or reducing the risk of loss arising from changes in interest rates, currency exchange rates or other factors of similar nature,
 - (ii) eliminating or reducing the costs of raising funds or borrowing or the cost of other transactions carried out in the ordinary course of business, or
 - (iii) increasing return on investment;
- (g) guarantee, with or without security, the indebtedness and performance of obligations of other entities (provided that the Corporation receives valuable and commensurate consideration for, or direct or indirect advantage from, the giving of the guarantee);
- (h) draw, accept and negotiate negotiable instruments;
- (i) accept any security, guarantee, indemnity or surety;
- (j) enter into contracts of insurance with respect to any of its activities and property;
- (k) enforce any security, guarantee or indemnity;
- (l) compromise any claim or forgive or forebear any debt or other obligation owed to the Corporation in respect of a specified class of eligible bank assets;
- (m) open and maintain bank accounts, including accounts in currencies other than the Naira, and carry out necessary banking transactions;
- (n) form or acquire a wholly owned subsidiary or form or acquire an interest in a holding company for the purpose of performing any of its functions;

- (o) give security for any debt, obligation or liability of any company referred to in paragraph (n);
 - (p) enter into a partnership or joint venture for the purpose of performing any of its functions;
 - (q) establish a trust or participate in a trust as trustee or beneficiary;
 - (r) borrow or lend debt securities, including but not limited to, equity and debt instruments;
 - (s) invest its funds as the Board may, from time to time, determine;
 - (t) sell or dispose of the whole or any part of the property or investments of the Corporation, either together or in portions, for such consideration and on such terms as the Board may approve;
 - (u) engage on competitive basis, from time to time, such consultants and advisers and other service providers as are necessary or expedient for the performance of its functions; and
 - (v) do all such other things as the Board considers incidental to or conducive to the attainment of any of the Corporation's functions under this Act.
- (2) The Corporation may carry out any of its functions and exercise any of its powers:
- (a) within or anywhere outside Nigeria;
 - (b) alone or in conjunction with others; and
 - (c) by or through an agent, a wholly owned subsidiary of the Corporation, contractor, factor or trustee.
- (3) Except as otherwise provided in this Act, the Corporation may carry out any of its functions without the consent or approval of any other person or authority.
- (4) For the purpose of subsection (1) (g) of this section, "other entities" means subsidiaries or special purpose vehicle set up by the Corporation.
- (5) The power of the Corporation to compromise any claim or forgive or forebear any debt or other obligation owed to the Corporation in respect of a specified class of eligible bank assets shall, where such

compromise, forgiveness or forbearance will result in a failure to recover the price paid by the Corporation for the acquisition of the eligible bank asset, only be exercisable with the approval of the Minister of Finance acting on the recommendation of the Central Bank of Nigeria that it is in the public interest so to forbear or forgive.

7. Notwithstanding anything to the contrary contained in this Act, the Corporation may appoint, on selective competitive basis:
- (a) asset managers to manage assets as may be specified by the Board; and
 - (b) recovery agents for the purpose of recovering debts due to the Corporation or debt arising from acquisition of eligible bank assets as may be specified by the Board.
8. The Central Bank of Nigeria, in consultation with the Federal Ministry of Finance, may issue guidelines and directions in writing to the Corporation in connection with the performance of any of the Corporation's functions under this Act.

Appointment of asset managers.

Powers of The Central Bank of Nigeria to issue guidelines and directions.

PART II — ADMINISTRATION AND MANAGEMENT

9. (1) There is established for the Corporation the Board of Directors (in this Act referred to as "the Board") which shall be responsible for:
- (a) the attainment of the objects of the Corporation;
 - (b) the policy and general supervision of the affairs of the Corporation; and
 - (c) such other functions conferred upon it by any other provision of this Act.
- (2) The Board may delegate any part of its responsibilities under subsection (1) of this section and under any other provision of this Act as it may deem fit.

Establishment and responsibility of the Board.

10. (1) The Board shall consist of the following members to be appointed by the President subject to the confirmation of the Senate: Composition and tenure of the Board.
- (a) a part-time Chairman who shall be a nominee of the Federal Ministry of Finance in consultation with the Minister;
 - (b) a Managing Director who shall be the Chief Executive Officer of the Corporation nominated by the Central Bank of Nigeria;
 - (c) 3 Executive Directors who shall be nominated by the Central Bank of Nigeria in consultation with the Minister; and
 - (d) 5 other non-Executive Directors, 2 to be nominated by the Federal Ministry of Finance, 2 by the Central Bank of Nigeria and one by the Nigeria Deposit Insurance Corporation.
- (2) A person shall not be appointed as a member of the Board unless such a person possesses 10 years cognate financial experience at a senior management level or such other relevant experience as may be prescribed by the Central Bank of Nigeria.
- (3) A member of the Board appointed pursuant to this section:
- (a) shall hold office for a term of five years; and
 - (b) may be eligible for reappointment for another term of five years and no more.
- (4) The provisions contained in the Schedule to this Act, shall have effect with respect to the proceedings of the Board and the other matters contained therein. Schedule
11. In the discharge of their responsibilities, members of the Board shall act in utmost good faith, with care, skill and diligence. Members of the Board to act in good faith.
12. Members of the Board shall be paid such remunerations and allowances as the Central Bank of Nigeria may, from time to time, determine and subject to the approval of the Minister. Remunerations of Board members.
13. A person shall not be appointed or remain a member of the Board if he is: Disqualification and cessation of office.
- (a) adjudged bankrupt or suspends payment to, or compounds or makes an arrangement with, his creditors;
 - (b) found guilty of misconduct in relation to his duties;
 - (c) convicted of an offence involving fraud or dishonesty or other offence the maximum penalty for which exceeds imprisonment

for 6 months:

- (d) a debtor to an eligible financial institution and the debt owed qualifies as an eligible bank asset;
- (e) disqualified or suspended from practising his profession in Nigeria by order of a competent authority made in respect of him personally; or
- (f) disqualified or restricted from being a director of a financial institution.

14. (1) A member of the Board may at any time resign his office by giving at least one month's notice in writing to the President through the Governor of his intention to do so. Resignation and removal of Board members.
- (2) The President, upon the recommendation of the Governor, may remove a member at any time from membership of the Board if :
- (a) the member is disqualified on any of the grounds specified in section 13 of this Act;
 - (b) the member:
 - (i) has become incapable, through illness or injury, of performing his functions; or
 - (ii) has contravened the provisions of this Act;
 - (c) a conflict of interest has arisen in relation to the member; or
 - (d) his removal appears to be necessary or expedient for the effective performance of the functions of the Corporation.
15. If a member of the Board dies, resigns, retires, becomes disqualified or is removed from office, the Federal Ministry of Finance, the Central Bank of Nigeria (CBN) or the Nigeria Deposit Insurance Corporation (NDIC), as may be applicable, shall nominate a person to fill the vacancy so occasioned and the person so nominated shall be appointed by the President for the remainder of the term of office of the member whose death, resignation, retirement, disqualification or removal occasioned the vacancy. Filling of casual vacancy.
16. (1) All members of the Board shall, before assumption of duty, declare in writing to the Board their personal debt and pecuniary obligations to eligible financial institutions as well as those of their family members Declaration of debt obligations and disclosure of interest.

or those of their close business associates known to them or any company or firm in which they own such significant shareholding as may be prescribed by the Central Bank of Nigeria.

- (2) If a member of the Board has pecuniary interest or other beneficial interest in, and material to, a matter that falls to be considered by the Board, he shall:
 - (a) disclose to the other members of the Board the nature of his interest in advance of any consideration of the matter;
 - (b) not influence nor seek to influence a decision to be made in relation to the matter;
 - (c) take no part in any consideration of the matter;
 - (d) absent himself from the meeting or that part of the meeting during which the matter is discussed; and
 - (e) not vote or otherwise act on a decision relating to the matter.
 - (3) If a member declares an obligation or discloses an interest pursuant to subsection (1) or (2) of this section, the declaration or disclosure shall be recorded in the minutes of the meeting of the Board or otherwise duly recorded.
 - (4) All employees of the Corporation shall, within one month of employment, declare in writing to the Corporation their personal debt and pecuniary obligations (interests) to eligible financial institutions as well as those of their family members or close business associates known to them, any company or firm in which they own such significant shareholding as may be prescribed by the Central Bank of Nigeria.
 - (5) A member of the Board or any employee of the Corporation shall not either directly or indirectly be involved in the purchase of any asset of the Corporation.
17. (1) The Managing Director shall have responsibility for the day-to-day management of the affairs of the Corporation. Management of the Corporation.
- (2) The Managing Director shall be responsible to the Board for the performance of his functions and the implementation of the Corporation's strategic plans and objectives.
 - (3) The functions of the Managing Director shall be performed during his

absence by one of the Executive Directors designated by him for that purpose.

(4) The terms and conditions of service of the Managing Director and the Executive Directors shall be determined by the Board from time to time, subject to the approval of the Central Bank of Nigeria.

18. (1) The Board may appoint such number of persons as staff of the Corporation on such terms and conditions of service as may be determined by the Board, from time to time. Appointment of other staff.

(2) There shall be appointed for the Corporation by the Board a Secretary who shall be a legal practitioner who has been so qualified for not less than 10 years.

(3) The Secretary shall-

(a) issue notices of meetings of the Board;

(b) keep records of the proceedings of the Board; and

(c) carry out such duties as the Managing Director or the Board may, from time to time, direct.

PART III — FUNDS, FINANCES, ACCOUNTS, AUDIT, ETC.

19. (1) There shall be established for the Corporation a Fund which shall consist of: Funds, finances, accounts, audit, etc of the Corporation.

(a) authorised capital provided by the subscribers to the capital of the Corporation;

(b) income from the management and disposal of eligible bank assets acquired by the corporation;

(c) investment income of the Corporation;

(d) moneys borrowed from any source in accordance with the provisions of this Act with the approval of the Board; and

(e) moneys from any other sources as may be approved by the Board.

(2) There shall be chargeable to the Fund-

(a) amounts payable to the members of the Board;

- (b) remunerations and other costs of employment of staff of the Corporation;
- (c) all expenses incurred on behalf of the Corporation;
- (d) interest on the payment of moneys borrowed on behalf of the Corporation;
- (e) amounts payable for the redemption of bonds and debt securities issued by the Corporation;
- (f) commission or fees payable to any agent or consultant engaged by the Corporation; and
- (g) any other payment for anything incidental to or in connection with the functions of the Corporation under this Act.

20. (1) The Corporation shall cause to be kept proper books of accounts with respect to all the transactions of the Corporation in such form and in compliance with such accounting standard as the Central Bank of Nigeria may specify by regulations. Books of accounts.
- (2) For the purpose of subsection (1) of this section, proper books of accounts shall be deemed to be kept with respect to all transactions if such books as are necessary to explain such transactions and give a true and fair view of the state of affairs of the Corporation are kept by the Corporation in compliance with the relevant accounting standard as may be prescribed by the Central Bank of Nigeria.
- (3) The Corporation shall keep, in the form that the Central Bank of Nigeria may direct, proper and usual accounts of money received and expended by it and of all financial transactions undertaken in the performance of its functions.
21. (1) Not later than 3 months after the end of each financial year, beginning with the financial year ending 2010, the Corporation shall submit a report (in this Act referred to as an "annual report") to the Ministry of Finance and the Central Bank of Nigeria of its activities during the financial year concerned. Annual report.
- (2) An annual report shall be in such form, and shall include such information, as may be specified by the Central Bank of Nigeria.
- (3) The financial year of the Corporation shall begin on the 1st day of January and end on the 31st day of December or as may be determined by the Board with the approval of the Central Bank of Nigeria.

22. (1) The Ministry of Finance or the Central Bank of Nigeria may require the Corporation to report to it at any time and in any format that the Ministry of Finance or the Central Bank of Nigeria may direct on any matter, including the performance of its functions under this Act and any information or statistics relating thereto.

Report to Central Bank of Nigeria, etc.

(2) The Corporation shall submit within every financial year, quarterly report of its operations as at when due, to the both Houses of the National Assembly through the relevant Standing Committees of the National Assembly.

23. (1) The Corporation shall submit its accounts for audit within 4 months after the end of each financial year to such independent firm of auditors from a list of auditors approved by the Auditor-General for the Federation.

Audited accounts.

(2) The Corporation shall, within 6 months after the end of each financial year, publish in widely available media and present a copy of the accounts as audited to the National Assembly, the Ministry of Finance and the Central Bank of Nigeria.

PART IV — ELIGIBLE BANK ASSETS ACQUISITION, MANAGEMENT, ETC.

24. The Central Bank of Nigeria may designate through guidelines any class of bank assets as eligible bank assets.

Designation of eligible bank assets.

25. (1) The Corporation may, subject to the provisions of this Act, within 3 months of the designation of any asset as eligible bank asset in pursuance of section 24, specifying a class of bank assets as an eligible class of bank assets, purchase, on a voluntary basis, eligible bank assets from any eligible financial institution desirous of disposing of such eligible bank assets at a value and price to be determined in accordance with the provisions of section 28 of this Act provided that the Central Bank of Nigeria may extend the period specified in this section for a further period not exceeding 3 years.

purchase of eligible bank assets by the corporation.

(2) The Central bank of Nigeria shall by regulation prescribe the maximum percentage of eligible class of bank assets which an eligible financial institution may retain in its books and any eligible bank assets above the prescribed threshold shall be offered to the Corporation for acquisition.

26. (1) The consideration to be furnished by the Corporation for an eligible bank asset shall be 7 years bonds or such other debt securities of such other tenor as the Central Bank of Nigeria may prescribe, issued by the Corporation and guaranteed by the Federal Government of Nigeria or such other form of consideration as may be approved by the Central Bank of Nigeria.

Consideration for purchase of eligible bank assets.

(2) Bonds or other debt securities issued by the Corporation in pursuance of subsection (1) of this section, shall qualify:

(a) as an instrument in which the Central Bank of Nigeria may invest under the Central Bank of Nigeria Act;

(b) as an instrument in which pension funds may be invested under the Pension Reform Act, 2004; and

(c) as an instrument for the purposes of section 28 of the Central bank of Nigeria Act.

27. Bonds or other debt securities issued by the Corporation in pursuance of sections 6 (1) and 26 of this Act shall be deemed to qualify for the grant of guarantee under section 47 of Fiscal Responsibility Act, 2007, and shall accordingly be guaranteed by the Federal Government of Nigeria.

Guarantee of Corporation's bonds by Federal Government of Nigeria.

28. The valuation of, and purchase price of eligible bank assets shall be determined in accordance with guidelines issued from time to time by the Central Bank of Nigeria:

Valuation and purchase price of eligible bank asset.

Provided that in prescribing parameters for the valuation of, and purchase price of, eligible bank assets, the Central bank of Nigeria shall obtain and be guided by independent advice, publish and make widely available the valuation basis and ensure consistent application of the valuation parameters.

29. An eligible financial institution desirous of disposing of its eligible bank assets to the Corporation shall:

Procedure to be followed by eligible financial institution.

(a) apply to the Corporation in such form and manner as the Corporation may, by regulation, prescribe;

(b) provide the Corporation with information, warranties, representations and indemnities in such form and in such manner as may be required by the Corporation about the eligible bank assets and disclose in utmost good faith, all matters and circumstances in relation to the eligible bank asset that may materially affect either the Corporation's decision to

acquire the eligible bank asset or the value that the Corporation may place on the asset; and

- (c) produce to the Corporation for inspection the credit facility documentation, books and records kept in connection with the eligible bank asset.

30. The Corporation may acquire an interest in an eligible bank asset of an eligible financial institution if the Corporation considers it necessary or desirable to do so and shall acquire any eligible bank asset if so requested by the Nigerian Deposit Insurance Corporation acting in consultation with the Central Bank of Nigeria in pursuance of section 38(2) (d) of the Nigerian Deposit Insurance Corporation Act. Corporation not bound to purchase eligible bank asset. Cap. 102 LFN, 2004
31. Where the Corporation has acquired an eligible bank asset, the eligible financial institution from which the eligible bank asset was acquired shall deliver to the Corporation or its nominee all its books and records in relation to the eligible bank asset concerned and any document of title that the eligible financial institution holds in respect of any property that is subject to a security which is part of the eligible bank asset and execute all such instruments necessary to properly document the acquisition. Delivery of books, records, etc to the Corporation upon purchase.
32. An eligible financial institution from which the Corporation has acquired an eligible bank asset shall enter into a purchase agreement with the Corporation in connection with the eligible bank asset acquired and the eligible financial institution shall, under the purchase agreement, indemnify the Corporation for any loss suffered in the event that the collateral turns out to be invalid or otherwise unenforceable. Purchase agreement, indemnity, etc.
33. (1) As soon as possible, after the acquisition of an eligible bank asset from an eligible financial institution, the eligible financial institution shall notify the relevant debtor, associated debtor and guarantor or surety of the debtor and any other person that the Corporation directs, of the acquisition of the eligible bank asset by the Corporation. Notice to debtors, etc of acquisition of eligible bank assets.
- (2) The Corporation shall not be liable for any failure or delay in notifying any person under subsection (1) of this section and such failure or delay shall not invalidate the eligible bank asset concerned.
34. (1) Subject to the provisions of the Land Use Act and section 36 of this Act, where the Corporation acquires an eligible bank asset, such eligible bank asset shall become vested in the Corporation and the Corporation shall exercise, all the rights and powers and subject to the provisions of this Act, become subject to all of the obligations of the eligible financial institution from which the eligible bank asset was acquired in relation to the bank asset, the debtor concerned and any Effect of acquisition of eligible bank asset by the Corporation. Cap. L1 LFN, 2004

guarantor, surety or receiver, liquidator, examiner or any other person concerned and the eligible financial institution shall cease to have those rights and obligations.

(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 assignment of every relevant contract relating to an eligible bank asset in the Corporation upon the acquisition of an eligible bank asset by the Corporation as contemplated in subsection (1) of this section shall take effect and be effective notwithstanding any:

Cap.L1 LFN, 2004

(a) contractual restriction on the acquisition, assignment or transfer or of the bank asset or any part thereof or any contract relating thereto; or

(b) requirement for a consent, notification, registration, authorization or licence (by whatever name and however described).

(3) Without prejudice to the provisions of subsections (1) and (2) of this section, the Corporation may direct an eligible financial institution to hold an eligible bank asset or relevant contract deemed vested in, or assigned to the Corporation by the provisions of subsection (1) of this section 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 of 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 contracts deemed assigned by the provisions of this subsection (1) of this section.

(4) 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 pursuant to subsection (3) of this section shall be held as bare trustee, in trust for, and for the sole benefit of the Corporation and turn 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.

35. (1) For the avoidance of doubt, after the Corporation has acquired an eligible bank asset and subject to any exclusion stated in the purchase agreement relating thereto, the Corporation shall be entitled to exercise all rights and powers in relation to the eligible bank asset and any security interest connected to the eligible bank asset.

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

- (2) The Corporation shall be entitled to the benefit of 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 Corporation shall be entitled to exercise such right, by directing the eligible financial institution to 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) of this section, 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 institution could have realized;
 - (c) call up any guarantee that the eligible financial institution could have called up;
 - (d) participate to the same extent as the eligible financial institution could have participated in any resolution, workout, programme of arrangement and restructuring, reorganisation, 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.

36. (1) Upon acquisition by the Corporation of an eligible bank asset secured in whole or in part by landed property or by collateral or security interest which restricts the alienation or contract as a matter of law (in this Act referred to as "Restrictive Collateral"), the eligible financial institution from which such Restrictive Collateral is acquired shall hold such Restrictive Collateral, as bare trustee, in trust for and the sole benefit of the Corporation and shall at the sole direction of the Corporation realize or otherwise deal with such Restrictive Collateral as may be directed by the Corporation and shall turn over all proceeds received from such realization or dealing to the Corporation.

Restrictive Collateral
to be held in trust.

(2) Where the Restrictive Collateral contains a power of attorney in favour of the eligible financial institution concerned, such eligible financial institution shall, as an attorney, act at the sole direction of the Corporation and in so acting as attorney shall, if so instructed by the Corporation appoint the Corporation as receiver or receiver-manager over the Restrictive Collateral, and such appointment, whether by deed or otherwise, shall, notwithstanding anything in the Restrictive Collateral or any other law, be deemed to be valid and effectual.

37. (1) Notwithstanding anything to the contrary contained in this Act, where an eligible bank asset acquired by the Corporation falls into any of the categories of 'tainted eligible bank assets' listed in subsection (2) of this section:

Tainted eligible bank asset.

(a) the borrower or other obligor connected with such tainted eligible asset shall not be entitled to, and shall not be granted, any forbearance, waiver, or debt forgiveness by the Corporation; and

(b) the Corporation shall pursue, to the fullest extent possible, all lawful civil and criminal remedies against any such borrower or other obligor connected with such tainted eligible bank asset.

(2) Any eligible bank asset which falls into any of the following categories shall be deemed to be a tainted eligible bank asset:

(a) loans, credits or other financial accommodation obtained by insiders of, or persons related to or otherwise connected with, the eligible financial institution which granted the loan, credit or other financial accommodation where such loan, credit or financial accommodation was:

(i) obtained in breach of the rules and regulations of the eligible financial institution which granted the loan, credit or financial accommodation,

(ii) secured against the shares or other securities of the eligible financial institution which granted the loan, credit or financial accommodation, or

(iii) in breach of rules and regulations of the Central Bank of Nigeria;

(b) loans, credits or other financial accommodation obtained or applied by insider of, or persons related to, or otherwise connected with the eligible financial institution towards the purchase of the shares of the eligible financial institution

which granted the loan, credit or other financial accommodation; or

(c) loans, credits or other financial accommodation granted or obtained:

(i) by insider of, or person related to or otherwise connected with, the eligible financial institution which granted the loan, credit or financial accommodation, in breach of the provision on financial assistance rules under the Companies and Allied Matters Act,

Cap. C20 LFN, 2004

(ii) for the purpose of market manipulation and market rigging or for the acquisition of shares in breach of the Investments and Securities Act or rules or regulations made thereunder, and

No. 29 of 2007

(iii) in breach of any law, including but not limited to, laws relating to, banking and company.

(3) For the purpose of this section, "insider of, or persons related to or otherwise connected with, an eligible financial institution" includes directors, officers or persons with significant shareholding in the eligible financial institution, their spouses, their children, their children's spouses, relations or proxies.

38. Where the Corporation is a party to any legal proceedings affecting an acquired eligible bank asset, the eligible financial institution from which the eligible bank asset was acquired shall, if the Corporation so requests, provide the Corporation with any assistance reasonably required by the Corporation, for the purpose of the proceedings including the:

Assistance to Corporation by eligible financial institutions in legal proceedings.

(a) provision of any documents or information;

(b) making available of any witnesses; and

(c) provision of any evidence by way of affidavit or otherwise.

39. The Corporation may transfer, assign, sell or otherwise dispose of any acquired eligible bank asset to any person notwithstanding:

Transfer, assignment, etc. by Corporation to override restriction on disposal.

(a) a contractual requirement or any requirement under any enactment for the consent of, notice to or document from, any person to the disposal; or

(b) a provision of any enactment prohibiting or restricting the disposal.

40. Where the Corporation has acquired an eligible bank asset that is secured by a pledge or charge, but the pledge or charge is a second or subsequent pledge or charge, the Corporation may, regardless of whether a vesting order has been made in relation to the security, redeem or discharge anyone or more of the prior pledges or charges in accordance with its terms.
41. (1) Any instrument under the seal of the Corporation that is expressed to convey any interest in an eligible bank asset to another person shall be taken for all purposes to validly convey the interest so expressed to be conveyed.
- (2) An instrument referred to in subsection (1) of this section shall without any further assurance operate to extinguish the interest of any other chargee or pledgee in an eligible bank asset concerned other than a charge or pledge which has priority to the interest of the Corporation and has not been redeemed or discharged under section 39 of this Act.
42. Where in relation to an eligible bank asset acquired by the Corporation, an eligible financial institution fails to:
- (a) disclose to the Corporation any representation or obligation which the eligible financial institution made or undertook in favour of a debtor or any other person which would affect the creditors' rights in relation to the eligible bank asset; or
- (b) record a note or memorandum specifying the consideration paid in respect of such representation or obligation that representation or obligation may be enforceable only in damages by the debtor or any other person only against the eligible financial institution and not the Corporation.
43. (1) Nothing in this Act shall:
- (a) render the Corporation or any person acting on its behalf or through it liable for any breach of contract, misrepresentation, breach of duty, breach of trust or other legal or equitable wrong committed by an eligible financial institution; and
- (b) deprive any person of any remedy against an eligible financial institution in respect of a legal or equitable wrong referred to in paragraph (a) of this section.
- (2) An action shall not be brought or commenced against the Corporation until after the expiration of 30 days notice in writing to the Corporation giving details of the alleged wrong, date and remedy sought.
- (3) If, after the expiration of the 30 days notice stated in subsection (2)
- Power to discharge second or subsequent pledge.
- Validity of transfer of interest by document under Corporation's seal.
- Undisclosed representations, undertakings and obligations to debtors unenforceable against the Corporation.
- Limitation on liability of Corporation.

of this section, 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 intended to be done or purported to be done in good faith in the execution of duties, powers and obligation imposed on the Corporation or any of its shareholders, directors or office.

44. If the Corporation so directs, an eligible financial institution from which the Corporation has acquired an eligible bank asset shall indemnify the Corporation and its officers against any liability or loss:
- Indemnification of Corporation by eligible financial institution.
- (a) arising from any error, omission or mis-statement in any information or certificate provided to the Corporation by or on behalf of the eligible financial institution; or
 - (b) in respect of any claim, award, payment or damages which the Corporation becomes liable to pay to any person where the liability arises in connection with a cause of action occurring prior to the date of transfer or as the case may be any proportion of such liability is attributable to a period prior to the date of transfer.

45. Where an eligible bank asset has been acquired by the Corporation notwithstanding anything contained in any law, the Corporation shall not be required to become registered as owner of any security that is part of the eligible bank asset acquired by it and shall nonetheless have the powers and rights of a registered owner of such security under any law for the time being in force:
- Corporation not required to be registered as owner of security.

Provided that the Corporation may, at its discretion, elect to register any interest capable of registration.

46. (1) The Corporation may, from time to time, after consultation with the Minister and Governor, redeem and cancel debt securities issued by the Corporation under this Act.
- Redemption of debt securities issued by the Corporation.
- (2) The Corporation shall create a sinking fund or any other fund, for the purposes of covering any shortfall that may be required to meet its obligations to redeem its debt securities, in such manner as may be jointly specified by the Federal Ministry of Finance and the Central Bank of Nigeria.

47. 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
- Treatment of assets upon dissolution of Corporation.

distributed by the Governor between the subscribers to the capital of the Corporation in proportion to their respective stake in the authorized capital of the Corporation.

PART V — SPECIAL POWERS OF THE CORPORATION

48. (1) The Corporation shall have power 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. Powers of the Corporation to act as or appoint a receiver for a debtor company.
- (2) A receiver under this Act shall have power to:
- (a) realize the assets of the debtor company;
 - (b) enforce the individual liability of the shareholders and directors of the debtor company; and
 - (c) manage the affairs of the debtor company.
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 by motion *ex-parte* for an order granting possession of the property to the Corporation. Custody and possession of debtor's property.
- (2) The Corporation shall serve a certified true copy of the order of the Court issued pursuant to subsection (1) of this section on the debtor or debtor company.
- (3) The Corporation shall commence debt recovery action against the debtor or debtor company in respect of whose property an order subsists pursuant to subsection (1) of this section within 14 days from the date of the order, failing which the order shall lapse.
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 by motion *ex-parte* for an order freezing the debtor or debtor company's account. Attachment and freezing of debtor's bank account.
- (2) The Corporation shall commence debt recovery action against a debtor or debtor company whose account has been frozen by a Court order issued under subsection (1) of this section within 14 days from the date of the order, failing which the order shall lapse.
51. (1) Where the Court gives decision against a debtor in a debt recovery action under this Act requiring the debtor to pay any sum to the Special powers in bankruptcy proceedings.

Corporation and such sum is not liquidated or paid over to the Corporation within 30 days from the date of the order for payment thereof, the Corporation may apply to the Court to issue a receiving order against the debtor.

(2) Subject to subsection (1) of this section, it shall not be necessary for the debtor to commit an 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

(3) 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.

(4) 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.

(5) A trustee appointed under this Act shall have all the powers of a trustee of an adjudged bankrupt under the Bankruptcy Act and shall perform his duties in accordance with that Act.

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

(7) Any person adjudged a bankrupt under this Act shall be 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.

52. (1) Where the Court gives a decision against a body corporate in a debt recovery action under this Act, requiring the debtor company to pay any sum to the Corporation and such sum is not liquidated or paid over to the Corporation within 90 days from the date of the order for payment, the Corporation may apply to the court to issue a winding up order against the debtor company.

Special powers in winding up proceeding.

(2) Where a winding up order is made, the Court may, on the application of the Corporation, appoint the official receiver or some other fit person to assume the office of a liquidator to wind up the affairs of the debtor company.

(3) Any liquidator appointed pursuant to this Act shall have all the powers of a liquidator under the Companies and Allied Matters Act and shall perform his duties in accordance with that Act. Cap. C20 LFN,2004

(4) An act, thing, directive or permission authorised or required to be done or given by the committee of inspection or by the creditors under the Companies and Allied Matters Act may be done or given by the court on the application of the Liquidator. Cap. C20 LFN, 2004

(5) Any winding up order made against any debtor company under this Act shall be deemed to have been made under the Companies and Allied Matters Act and the provisions of the Companies and Allied Matters Act shall have effect with such modifications as are contained in this Act. Cap. C20 LFN, 2004

PART VI- SPECIAL DEBT RECOVERY PROCEDURE

53. The Chief Judge of the Federal High Court may designate any Judge of the Federal High Court to hear matters for the recovery of debts owed to the Corporation or an eligible financial institution and other matters arising from the provisions of this Act to the exclusion of any other matter for such period as may be determined by the Chief Judge. Designation of a Judge to hear matters.

PART VII — OFFENCES AND PENALTIES

54. (1) A person who: Offences and penalties.

(a) makes any false claim in any material respect in relation to any movable or immovable property used as collateral for any loan with a view to defeating the realization of the debt commits an offence and is liable on conviction to a fine of not less than 5 million Naira or imprisonment for a term not less than 3 years or to both such fine and imprisonment;

(b) is charged with an offence under this Act but the evidence establishes an attempt to commit the offence may be convicted of attempt to commit that offence, although the attempt is not separately charged and punished as provided under this Act, or

(c) is charged with an offence under this Act but the evidence establishes the commission of a lesser offence under this Act, the offender shall be convicted of that lesser offence and punished as provided under this Act; and

(d) aids, abets, counsels, procures or conspires with any other person

to commit any offence under this Act, commits an offence and is liable on conviction to a fine not less than 5 million Naira or imprisonment for a term not less than 3 years or to both such fine and imprisonment.

- (2) A person who, being indebted to or being a customer of an eligible financial institution or otherwise connected to the debt, negligently, willfully or recklessly makes a statement or gives any information knowing it to be false in relation to a loan, an advance, a guarantee or any other credit facility commits an offence under this Act and is liable on conviction to a fine not less than 5 million Naira or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.
- (3) Where a person referred to in subsection (1) or (2) of this section is a body corporate, any of its directors, managers, officers, employees or partners who is responsible or is in any way connected with the doing of any of the acts referred to in those subsections is guilty of the same offence under this Act and liable on conviction to the same punishment.
- (4) The conviction of a body corporate for any of the offences under subsection (1) or (2) of this section shall be a ground for winding up of the affairs of that body corporate.
- (5) Save as otherwise specifically provided under the provisions of this Act, any person who contravenes or attempts to contravene or aids or abets the contravention of the provisions of this Act or in any way obstructs the implementation of the provisions of this Act commits an offence and is liable on conviction to a fine not less than 3 million Naira or to imprisonment for a term not less than 2 years or to both such fine and imprisonment.
- (6) In this section, reference to eligible financial institution includes the Corporation.

55. Prosecution of offences under this Act shall be by the Attorney-General of the Federation or his officers or any other legal practitioner with the consent of the Attorney-General of the Federation.

Prosecution of offences.

PART VIII — MISCELLANEOUS

56. (1) The Corporation shall prepare codes of practice for approval by the Central Bank of Nigeria to govern:

Code of practice.

(a) the conduct of officers of the Corporation

- (b) servicing standards for acquired eligible bank assets;
- (c) risk management;
- (d) Custodial services for eligible bank assets; and
- (e) any other matter as may be directed by the Governor.

(2) If, in the opinion of the Governor, adequate provision has not been made in a code of practice drawn up by the Corporation under subsection (1) of this section, the Governor may require modifications to be made to the code of practice.

(3) The Corporation shall publish the code of practice, issued under this section as approved by the Central Bank of Nigeria, in the Official Gazette.

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| 57. | The Central Bank of Nigeria may make regulations to give effect to the provisions of this Act. | Power to make regulations. |
| 58. | The Central Bank of Nigeria shall have power to supervise and regulate the activities and functions of the Corporation and may in this regard appoint examiners and any other person to carry out special or routine examination of the books and affairs of the Corporation. | Power of the Central Bank to supervise and regulate the Corporation. |
| 59. | Nothing in this Act shall be construed as a waiver of any regulatory or statutory power or function of the Central Bank of Nigeria and the Governor in relation to any eligible financial institution. | Regulatory powers and functions of Governor not affected. |
| 60. | (1) The Corporation shall be exempted from the provisions of :
<ul style="list-style-type: none"> (a) Capital Gains Tax Act or such other law of the National Assembly on capital gains; (b) the Companies Incomes Tax Act; and (c) the Stamp Duties Act. | Exemption from capital gains tax.
Cap. C1 LFN, 2004.

Cap. C 21 LFN, 2004. |
| 61. | In this Act:

"Board of the Bank" means the Board of Directors of the Central Bank of Nigeria;

"Corporation" means the Asset Management Corporation of Nigeria established pursuant to section 1 of this Act;

"court" means the Federal High Court; | Interpretation. |

"days" means working days;

"debt" means any credit facility, loan, risk asset, whether performing or non-performing, including interest thereon;

"debtor" or debtor company" means any borrower, beneficiary of an eligible bank asset and includes a guarantor of a debtor, guarantor or director of a debtor company;

"eligible bank assets" means assets of eligible financial institutions specified by the Governor as being eligible for acquisition by the Corporation pursuant to section 24 of this Act;

"eligible financial institution" means a bank duly licensed by the Central Bank of Nigeria to carry on the business of banking in Nigeria under the Banks and Other Financial Institutions Act; and shall include a bank or other financial institution, whose banking license has been revoked by the Central Bank of Nigeria, pursuant to the Banks and Other Financial Institutions Act.

"Governor" means the Governor of the Central Bank of Nigeria;

"hours" means working hours; and

"Minister" means the Minister charged with responsibility for finance.

62. This Act may be cited as the Asset Management Corporation of Nigeria Act, 2010. Citation

SCHEDULE
PROCEEDINGS OF THE BOARD

Board to Regulate Proceedings

1. Except as may otherwise be provided in this Schedule, the Board shall regulate, by standing orders or otherwise, its procedure and business.

Timing of meetings

- 2.-(1) Meetings of the Board shall take place as often as may be required, but not less than 9 times in every financial year of the Corporation.
- (2) The Board shall hold its first meeting on the date of inauguration of the Board or as soon as it is practicable after that date.
- (3) The Board shall meet whenever it is convened by the Chairman, and if the Chairman is requested to do so by notice given to him by not less than 2 other members, he shall convene a meeting of the Board to be held within 14 days from the date in which the notice was given.

Committees of the Board

3. The Board may establish such number of committees as it deems fit and may also establish such advisory committees which may include persons who are not members of the Board as it considers necessary:

Provided that the report of any such committee shall not be effective unless approved by the Board.

Quorum

- 4.-(1) The quorum for the meeting of the Board shall be 5 members 2 of whom must be Executive Directors and if there is a vacancy on the Board, 3 members one of whom must be an Executive Director.
- (2) A meeting held while there is a vacancy in the Board shall be valid notwithstanding the vacancy, so long as there is a quorum.

Presiding Officer

5. At a meeting of the Board, if the Chairman is:

- (a) present, he shall preside over the meeting; and
- (b) absent or the office of Chairman is vacant, the appointed members present shall choose one of them to preside over the meeting.

Voting

6. At a meeting of the Board each member present shall be entitled to one vote and any question on which a vote is required shall be determined by a majority of votes of members present and voting but in the case of an equal division of votes, the Chairman or the other member presiding over the meeting shall have a casting vote.
7. Where the Board seeks the advice of any person on a particular matter, the Board may invite that person to attend for such period as it deems fit, but a person who is invited by virtue of this paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards the quorum.

Tele-conference Meeting

- 8.-(1) In addition to meeting with all participants physically present, the Board may hold or continue a meeting by the use of any means of communication by which all the participants can hear and be heard at the same time and such a meeting is referred to in this section as a "tele-conference meeting".
- (2) A member of the Board who participates in a tele-conference meeting shall be taken for all purposes to have been present at the meeting.
- (3) The Board may establish procedures for tele-conference meetings (including recording the minutes of such meetings) in its minute's book.

Resolutions by circulation

- 9.-(1) The Board may pass a resolution without a meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution in the document.
- (2) A resolution referred to in subparagraph (1) may be passed by the members or some of them signing separate copies of the document referred to in that subparagraph if the date and time of each signature is indicated on the document concerned.
- (3) A resolution passed in accordance with this paragraph is taken to have been passed at the time on which the last member signs.
- (4) Subject to the provisions of this Act, the Corporation may validly act notwithstanding one or more vacancies among the members of the Board.

- 10.-(1) The Board shall, as soon as possible after the coming into force of this Act, provide the Corporation with a seal.
- (2) The seal of the Corporation shall be authenticated by the signatures of the Managing Director and Secretary to the Board or any 2 directors.
- (3) A document purporting to be an instrument made by and sealed with the seal of the Corporation and purporting to be authenticated in accordance with subparagraph (2) of this paragraph, shall be received in evidence and be taken to be an instrument unless the contrary is shown.
- (4) In the case of a contract or instrument that, if entered into or executed by an individual, would not be required to be under seal, the Board may delegate the authority to enter into such a contract or execute such instrument as the Board may deem fit.

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 THE BILL PASSED BY BOTH HOUSES OF THE NATIONAL ASSEMBLY.

Salisu


SALISU ABUBAKAR MAIKASUWA, mni
ACTING CLERK TO THE NATIONAL ASSEMBLY

9TH DAY OF JUNE, 2010

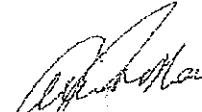
Schedule to the Asset Management Corporation of Nigeria Act, 2010.

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 Act, 2010.	A Bill for an Act to establish the Asset Management Corporation of Nigeria for the purpose of efficiently resolving the non-performing loan assets of banks in Nigeria.	This Act seeks to establish the Asset Management Corporation of Nigeria for the purpose of efficiently resolving the non-performing loan assets of banks in Nigeria.	2 nd June, 2010	3 rd June, 2010

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.


SALISU ABUBAKAR MAIKASUWA, mni
 Acting Clerk to the National Assembly
 4th Day of July, 2010

I ASSENT.


DR. GOODLUCK EBELE JONATHAN, GCFR
 President of the Federal Republic of Nigeria
 19th Day of July, 2010