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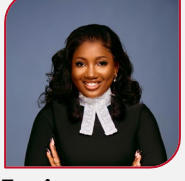
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DEBT RECOVERY IN NIGERIA: LEGAL INSIGHTS, STRATEGIES AND PRACTICAL APPROACHES

Introduction

The general understanding of “debt recovery” is the pursuit for realisation of money owed to a person. It often arises where the agreed timeframe for repayment of a debt has become due, but the debtor has failed and/or is unwilling to comply with the repayment obligation. Debt recovery is a conversation that will always resonate in the day-to-day activities of man as business transactions and the economic activities of every country revolve around money and both government and private institutions access facilities from lending institutions or subscribers to debt instruments. The Governments sells debt instruments to the public to raise funds for project execution and thereby become debtors to the holders or purchasers of the instruments; likewise, financial institutions issue loan to individuals and corporate bodies, and thereby become creditors of the borrowers.

These fund disbursements and many other debt forms are classified as debt and they are repayable on a named date or upon breach of terms of the loan or instrument, as the case may be. Most times, the borrower defaults in the repayment of obligation, thereby giving rise to the need for actions by the borrower to recover the money. The process of realizing the value of the debt owed by the debtor is referred to as “debt recovery”.

Effective debt recovery mechanisms are important for maintaining financial stability and confidence among key players, particularly the lenders whose monies are at stake. This is to ensure that lenders continue to show willingness to provide credit to intending borrowers, so that economic activities within the financial space is sustained. This article delves into the intricate realm of debt recovery, providing insights, strategies and practical approaches to ensure creditors are well equipped to recover monies lent to debtors.

In Nigeria, the debt recovery process is regulated by a variety of statutes, regulations, and judicial precedents. These measures have been put in place to safeguard the rights of the creditors and as well preserve the dignity of debtors. However, navigating the intricate legal landscape of debt recovery requires more than just legal knowledge; it requires strategic insights, practical approaches and an understanding of the unique challenges within the Nigerian context.

Black's Law Dictionary defines Debt as "a sum of money due by contract or by a certain and express agreement, which fixes the amount, independent of extrinsic circumstance."¹

Consequently, in order for a monetary claim to be considered a debt, there must have been a specific sum fixed, or liquidated amount of money; there must be a due date and such due date must have past; there must have been an agreement between two parties—the "Debtor," the party who owes the debt, and the "Creditor," the party who claims or is entitled to recovery of the sum, and/or that the event or terms and condition upon which the money shall become repayable has occurred or been breached, as the case may be.

Debt Recovery entails the process of ensuring that companies or individuals fulfill their financial obligations by repaying debts that remain unpaid past the agreed deadline. Most businesses rely heavily on banks, individuals and other financial institutions for loans. Similarly, many individuals secure loans from the financial institutions to support themselves and build wealth. However, it is common for both businesses and individuals to default on these loans and other outstanding debts. As a result, financial institutions and lenders often have no choice but to turn to a suiting debt recovery process to reclaim what is owed.



Legal Framework for Debt Recovery in Nigeria

There are various laws regulating debt recovery in Nigeria some of which are:

1. The Companies and Allied Matters Act 2020
2. The Bankruptcy Act, CAP. B2, L.F.N. 2004
3. The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, CAP. F2, L.F.N. 2004
4. The Secured Transactions in Movable Assets Act, 2017
5. High Courts Civil Procedure Rules of various States
6. Federal High Court (Civil Procedure) Rules, 2019

¹ Black's Law Dictionary, 10th Edition.

7. Asset Management Corporation of Nigeria Act (as amended), 2019
8. Banks and Other Financial Institutions Act (BOFIA) CAP B3. LFN, 2004.
9. Arbitration and Mediation Act, 2023
10. Nigeria Deposit Insurance Corporation Act
11. Insolvency Regulation
12. The Company Winding Up Rules
13. Company Winding Up Rules
14. Investment and Securities Act

Regulatory Bodies

1. Central Bank of Nigeria (CBN)- the Central Bank of Nigeria, in a bid to curb the high rate of loan repayment defaults and improve loan recovery for financial institutions, introduced the Global Standing Instruction (GSI) Mandate². The GSI Mandate is an instruction executed by an account holder of a bank (borrower) authorizing the creditor bank (and financial institutions) to recover a specified amount of money from any or all accounts maintained by the account holder across all banks in Nigeria³. Pertinently, this only applies where a financial institution is the creditor.
2. Nigeria Deposit Insurance Corporation (NDIC)- the NDIC plays a crucial role in debt recovery in Nigeria particularly where it involves a financial institution whose banking license has been withdrawn by the Central Bank of Nigeria and is undergoing liquidation. For instance, when a bank becomes insolvent, the NDIC manages the resolution process and recovering of outstanding loans owed to the bank. Furthermore, NDIC ensures that banks follow the proper lending and recovery practices.
3. Asset Management Corporation of Nigeria (AMCON) – AMCON is responsible for acquiring toxic debts (eligible bank assets) from financial institutions, managing distressed assets, reducing financial risks and helping to maintain the stability of Nigeria’s banking and financial institutions. It takes over Non-Performing Loans and recovers the debt from the debtors using instrumentality of the court.

Debt Recovery Strategies

Debt Recovery is primarily a civil subject; it is recommended to attempt resolving disputes outside the court system, by first resorting to any of the Alternative Dispute Resolution (ADR) mechanisms, before considering litigation which entails instituting a legal action in a court of law. Additionally, it is crucial to note that an

² Central Bank of Nigeria: Circular to all Banks and Financial Institutions; Operational guidelines on Global Standing Instruction (GSI) (2020) < [cbn - operational guidelines on global standing instructions gsi - individuals.pdf](#) > accessed 3rd September 2024

³ ibid

action to recover a debt must be filed within six years⁴ from when the debt accrued, as this is the statutory period after which the claim becomes time-barred and irrecoverable in law.

The Strategies for Debt Recovery are as follows:

1. Alternative Dispute Resolution (ADR)- ADR methods such as mediation, negotiation, arbitration and conciliation can be utilized to recover owed sums from debtors. One of the advantages of ADR is that; it is faster, cost efficient, flexible, less rancorous as it helps to preserve the relationships of both parties (the debtor and the creditor) unlike litigation. The Arbitration and Mediation Act 2023 contains enormous provisions that promote alternative dispute resolution via arbitration and mediation.
2. Litigation – Where the Alternative Dispute Resolution (ADR) mechanism fails, the creditor can take legal action by filing a lawsuit in a competent court of law using the appropriate originating process, to recover debts from a delinquent debtor. Litigation often dovetails into other debt recovery approaches. This is because the processes of other debt recovery mechanisms are often incomplete, impossible and/or unrealistic without the intervention of the courts. They are as outlined below thus:
 - (a) **Administration** – This mechanism is pursuant to the CAMA⁵ which allows a creditor to appoint an Administrator over a debtor company for the purpose of administering the affairs of the debtor company and realizing the money owed to the appointor.
 - (b) **Receivership**- Receivership has the semblance of Administration but with some copious dissimilarities. It arises where parties’ contract expressly provides for appointment of receiver or a receiver/manager in the event of default. A receiver/manager could also be appointed by the court⁶. The receiver is often appointed over a named or fixed asset or can be with respect to the entire affairs of a company. Importantly, while a receiver can be appointed over a juristic person, it is impossible to appoint a receiver over a natural person.

Where a receiver is appointed over a specific asset of a company, the powers of the directors of the company to deal in that asset cease and they automatically become vested in the appointed receiver. So also, if the appointment is over the entire affairs of the company, the powers of the directors immediately become suspended, and the receiver becomes the alter ego of the company and possessed with power to sell identifiable assets of the company until the debt owed to his appointor is realized. If however, he was appointed as both receiver and manager, he will be entitled to manage the affairs of the company while carrying out his duties as receiver. Notably, a receiver has the exclusive power to initiate and defend all suits on behalf of the company⁷ The

⁴ Sections 8(1)(a) ,12(1)(a) of the Limitation Law of Lagos State, 2015

⁵ Sections 443 to 445 of the Companies and Allied Matters Act, 2020

⁶ Section 550 to 553 of the Companies and Allied Matters Act, 2020

⁷ Eleventh Schedule, Companies and Allied Matters Act, 2020

receiver shall take possession of and protect the property, receive rents, profits, discharge all out-goings and realise the security for the benefit of those on whose behalf he is appointed⁸.

- (c) **Liquidation** - liquidation is a process where the operations of a company are wound up and a liquidator appointed to manage, collate and sell the assets of the company. This process often applies to the financial institution where a banking license is withdrawn or in the event of winding up of company or in bankruptcy proceedings against a person. The proceeds are used to pay off the creditors and any remaining funds are distributed to the shareholders before the company is formally dissolved.
- (d) **Winding Up** – This is resorted to where the debtor is a corporate body and unable to pay its debt. The **CAMA**⁹ pegs the sum of N200,000 (Two Hundred Thousand Naira) as the minimum threshold of debt to entitle a resort to winding up by a creditor. But the **Business Facilitation Act 2023**¹⁰ has altered the said provision of CAMA and subjected the debt threshold to be as may be determined by the Corporate Affairs Commission (CAC). Sadly, there is no regulation or guideline from the CAC so far fixing the minimum debt threshold to entitle a resort to winding up by a creditor.
- (e) **Bankruptcy** – This is a recovery approach applicable to an individual where an individual is unable to pay his debt. Bankruptcy is resorted only in special circumstances and can be initiated either at the instance of the creditor or at the instance of the debtor himself. **Section 1 of the Bankruptcy Act**¹¹ defines the conditions where a debtor may be declared bankrupt thus–
 - (a) (i) if a creditor has obtained a final judgment or final order against the debtor for any amount, the execution has not been stayed, and a bankruptcy notice has been served on the debtor.

(ii) if the debtor does not, within fourteen days of the service of notice, comply with the requirements of the notice or satisfy the court that he has a counter-claim, set off or cross demand which equals to or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained or the proceedings in which the order was obtained¹²,
 - (b) if an execution is levied against the property of the debtor under process in an action or proceedings in court and such property has been sold or held by the bailiff for twenty-one days
 - (c) if the debtor files in the court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself.

⁸ *ibid.*

⁹ Section 571 and 572 of the Companies and Allied Matters Act, 2020

¹⁰ Section 19 of the Business Facilitation Act, 2023

¹¹ CAP B2 LFN 2004

¹² Section 1(a) of the Bankruptcy Act

- (d) if the debtor suspends or gives notice that he is about to suspend payment of his debts to any of his creditors; or
- (e) if under a credit agreement the creditor becomes entitled to file a bankruptcy petition; or
- (f) if, in Nigeria or elsewhere, the debtor makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditor generally; or
- (g) if, in Nigeria or elsewhere, the debtor makes a fraudulent conveyance gift, delivery or transfer of his property or any part thereof, with an intent to defeat or delay the claim of his creditors; or
- (h) if, in Nigeria or elsewhere, the debtor makes any conveyance or transfer of his property or any part thereof; or created any charge thereon, which would under the Act or any other Act be void as a fraudulent preference if he were adjudged bankrupt; or
- (i) if, with intent to defeat or delay the claims of his creditors, the debtor departs out of Nigeria, or being out of Nigeria remains out of Nigeria, or departs from his dwelling, or otherwise absents himself.

Furthermore, the creditor may commence bankruptcy proceedings by filing a petition at the registry of the Federal High Court for the issuance of a Bankruptcy Notice¹³.

Practical Approaches to Dispute Resolution

Notably, before an action can be commenced in court for recovery of debt, a formal demand for the owed sum must have been made in writing to the debtor. The debt sum and the recovery approach to be resorted to determines the court and the nature of the originating process to be adopted. Also, the agreement of the parties determines whether litigation or an alternative dispute resolution is the debt recovery approach to be deployed by a creditor. The adjudicating body can either be the Arbitral Tribunal, Tax Appeal Tribunal, Investment and Securities Tribunal, Federal High Court, State High Court and/or Magistrate Court.

Conclusion

Effective Debt Recovery is an integral part of the Nigerian economy as it ensures financial stability for businesses and individuals. However, the debt recovery process in Nigeria faced with some challenges, some of which include cost of arbitration, compromised/weak enforcement mechanisms, prolonged court adjudication and technicalities of law.

¹³ Sections 2-4 of the Bankruptcy Act.