ASSET MANAGEMENT COMPANY OF NIGERIA: MATTERS ARISING

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ABSTRACT

The main thrust of this study is to critically analyze the issues, challenges and prospects that the Asset Management Company of Nigeria (AMCON) faces in resolving the unwarranted critical liquidity challenges the Nigerian Banking Sector found itself and matters arising thereof. There is no gainsaying the fact that in Nigeria like several countries of the world, the effects of the global economic downturn permeated and negatively affected both the Nigerian Stock Exchange and the Banking sector where toxic assets worth approximately $10 billion of toxic assets were held by banks whose assets suffered serious capital erosion due to market failures and poor quality lending decisions.

This study examines the intervention of the Central Bank of Nigeria through the Assets Management Corporation of Nigeria Act 2010 (AMCON Act) and employs as a deliberate strategy, an analytical exposition of the Act.

The study observed the partial or complete non- adherence to the codes of corporate governance, poor and faulty credit processing, management and control caused the 'global', Nigeria banking sector crisis. It opines that though the provisions of the AMCON Act are aimed at compelling the observance of codes of corporate governance and international best practices, to correct the inherent weaknesses in capital structure and the resulting liquidity quagmire, which the financial system strongman forcefully enabled with superior legislations., but there are still big question marks on its applicability and effectiveness. All these are issues reviewed in the first part of the study. The second part of the study expressed a measure of faith in the capability and potency of the AMCON institution to resolve the issue of financial distress and undercapitalization, if properly applied, it therefore looked at AMCON, issues related to its effective application and functioning; the seemingly compelling need for its invocation this time around, by the financial regulatory authorities. The third part of the article analyzed the anxieties, doubts, lack of trust and suspected double standards that tends to make AMCON as presently constituted seem as being used as a smokescreen by the financial regulators to achieve some hidden agenda, in the banking system.

The study recommends among other things, administrative and operational autonomy for AMCON, strict and full compliance with its codes of corporate governance and that the government should provide a suitable enabling *macroeconomic atmosphere for the operations of AMCON, totally devoid of sectoral or individual vested interests and official manipulations amongst many others.*

KEY WORDS; BANKING SECTOR, AMCON, CENTRAL BANK OF NIGERIA AND NON-PERFORMING LOANS

INTRODUCTION

The introduction of Asset Management Corporation of Nigeria (AMCON) in 2010 was at a time when some banks in the Nigerian financial Services industry were in deep financial mess. Some of the Commercial banks were given up to September 2011 by the Central Bank of Nigeria to either recapitalize or face liquidation. The specific purpose for setting up AMCON was to help acquire the Non-Performing loans (NPLs) of banks which came about due to the impact of the global economic crisis that shifted from the capital market to the banking sector where an estimated $10 billion of toxic assets were held by banks whose assets suffered capital erosion due to market collapse with a view to freeing such banks from the burden of provisioning requirements **–** Substandard, doubtful and lost accounts. The process of acquiring the NPLs involves the injection of fresh funds thereby alleviating the liquidity and insolvency problems of the affected banks.

The economic system worldwide depends on the financial system for settlement of transactions through the financial system intermediation function by which funds are moved in settlement of transactions both locally and internationally.

Money transmission for transactional settlement is just one aspect of the functions of banking to businesses and the economic system. Another very vital function of the banking system to every economic system is the provision of various types of financing; this involves the traditional intermediation function of the banking system, receiving funds from the surplus sector and making such funds available to the deficit sector (who are in need of funds to prosecute one economic activity or the other; this function in other words, is the credit facility extended to customers for various kinds of business activities.

Deposit money banks including commercial and merchant banks and other non-bank financial institutions offer credit facilities to economic sectors in need of funding for investment purposes for both individuals and corporate bodies to assist their business activities.

Incidentally, lending happens to be a major function of banks and indeed the highest income generator of all banking functions. As a result of its predominant place as the highest income earning service of banks, every deposit money bank engages the largest proportion of its available resources in making credits.

The reasons for that are not farfetched: these include the need to expand and improve income generation; the need to compete favourably and command a significant segment of entrepreneurs and economically viable individual investors.

However, due to poor credit management practices, overzealous banks prospecting for higher income generation, a credit facility poorly packaged, carelessly approved and administered is a potential bad asset from day one; this scenario has been a common feature in most of the credit portfolio of majority of the banks in Nigeria. This is more prevalent in times of economic boom or seasons of easy sourcing of deposits by the banks, when it becomes relatively easier to generate increased raw materials (i.e. cash deposit resources) enabling expanded credit creation opportunities for increased income generation desires of many banks. Effective bank lending is an outstanding driver of economic growth and entrepreneurship development, with proven evidence the world over (Alawiye-Adams A 2008).

Historically however, consistent evidence have shown that banks in Nigeria have abused the opportunity to lend and create unlimited credit in periods of deliberate policies of credit expansion by government, or seasons of monetary policy instigated credit expansion regimes to promote investment growth and economic development.

It is evident also that if any economic system must grow, there must be deliberate policy drive towards expanded investment in viable businesses that will stimulate increased manufacturing and other classes of productivity that will produce increased income generation activities, creating increased cash flow for organizations and ultimately in the bank accounts. This sophisticated investment and activity motivated economic expansion model that facilitates economic growth, creates value added and increased cash returning to the banks can only be enabled by an efficient credit expansion/management initiatives by an orderly, effectively supervised and policy compliant banking system; such a banking system that respects the rules of regulatory authorities, adopts good ethics and world class professional banking practice standards in the implementation and appropriate exploitation of credit creation and management for efficient economic growth and development hardly falls into the trap of financial crises..

CREDIT: - THE MOST VITAL ASSET OF BANKS

Bank credit in the form of loans and advances is known in the world of banking and finance as the most vital asset of a Banking Institution. It acceptably constitutes over two-thirds of the total assets value of a bank; it is equally known to be the highest income generating asset of all deposit money banks. It also constitutes a larger proportion of the deposit liability base of banks, which to a large extent is the source from which banks rely to create more loans and advances for economically viable investment projects. By the professional world banking practice standards, banks are permitted to use up to 75 percent of their customer's deposit liabilities to make loans and advances to healthy and viable business and investment projects.

From the evidence of history and acceptable standards of professional practice, credit is;

(i) The main source of income generation for its profitability and sustenance, and

(ii) From the point of view of fulfilling its economic responsibility of being the provider of funding and liquidity needs to the economic system of any nation; ; credit therefore is the life wire of the business of banking and at the same time the most reliable source of funding for the economic system worldwide.

The implications of the facts above are that: on the one hand, without credits banks may not survive as incomes from its other functions may not be sufficient to sustain their existence and on the other hand, credit provides funding to support economic development and growth. If banks cannot provide funding, particularly through credit and most other important support services offered may not in isolation be capable of sustaining the needs of the banks.

ABUSE OF THE CREDIT SYSTEM AND THE ADVENT OF ASSET MANAGEMENT

There is always the need for the role of the credit system to interplay with policies of economic growth and entrepreneurship development in the meeting of funding needs of all productive sectors of the economy, however, each time this opportunity become imminent either by government deliberate policy initiative or as a consequence of economic indicators interactions, bankers take undue advantage of the intervening needs, become grossly overzealous in their lending to meet the supposed needs of the productive sector. In the process, bankers throw relevant cautions to the wind, disregard regulatory provisions and reporting channels and standards, neglect ethical and professional standards in their lending judgments and decisions (though many times out of ignorance and lack of essential professional knowledge); thereby resultantly granting large volumes of credit under poor credit analysis and faulty approval judgments.

Credit facilities granted under the above situations will surely not stand the test of time, administration of such credits are defective, securitization will either be non-existent or improperly perfected. There are growing issues of compromise or deliberate fraudulent acts by bank officials in the approval, management, supervision and disbursement of credits.

The defective packaging, administration and securitization of credit facilities by banks have resulted in bad loans, abandoned credit facilities and unpaid credit agreements by funded businesses.

Under the situations above customers deposits are the first line of resources endangered by resulting bad loans and consequently the bank’s capital gradually gets eroded until shareholders funds and reserves totally diminishes in extreme cases.

As deposits and owners capital get eroded completely, such banks become technically insolvent and ultimately requiring capital injection by the existing or new investors.

Under such circumstances, if existing or new investors fail to salvage the situation two options become imperative either:-

(i) The intervention of the regulatory authorities to rise to the situation becomes inevitable or

(ii) The direct intervention of government directly or through a special resolution intervention vehicle, such as the recently established Asset Management Corporation of Nigeria (AMCON).

BAD LOANS AND SPECIAL ASSESTS MANAGEMENT

There is no doubt that lending is the most important function and the largest source of the bank's profit, however, lending activities are capable of making or marring the fortunes of a banking institution depending on the quality and the direction of lending decisions taken. At times of economic boom when banks have excessive cash to do business with, bankers seldom abuse the privilege of the credit creation chain in lending by:

(i) Over lending, stretching their liquidity potentials to the maximum, and thereby endangering their liquidity position in the short while in the desperation to meet lending and liquidity provision obligations to customers. The end result of which obviously puts the capital of the bank at risk over the medium term.

(ii) Banks also seldom exercise poor credit judgment in the packaging approval process, as a result of poor knowledge and inadequate experience in the practice of lending. In the event of the occurrence of any of the situations above, bank loans, most likely go bad becoming irrecoverable. Liquidity difficulties become imminent, and at the extreme, the bank's capital gets eroded in the process, such banks can ultimately become technically insolvent and may require capital injection by existing or new investors.

(iii) In the event the kind of situation above becomes prevalent among many banks, requiring the intervention of the regulatory authorities and the devise of a special resolution vehicle like AMCON become inevitable.

THE COMPELLING STATISTICAL EVIDENCE

The need for the AMCON institution as a resolution vehicle became evident in the revelations of the following statistical data (obtained from Central Bank Statistical Data) for 2009.

As at the end of 2009, deposit liability of all regulated deposit money bank, amounted to N9.15Trillion, loans and advances of the same institutions within the period in reference amounted to N8.45trillion which is about (92.5%) of total deposits. If we add the credit assets of other non regulated financial institutions, the total value of risk assets within the Nigeria financial environment as a proportion of deposit liabilities will be far above 100%.

The acceptable higher limit of the international standard of the proportion of risky assets (loans and advances) to deposit liabilities is a maximum of 75% for all efficiently run banks.

Within the same period of time, N2.2Trillion or 26% of credit risk assets were nonperforming. While the Nigeria banking system was operating under this dangerously fearful situation, some ignorant self styled analysts were proclaiming everywhere during the peak period of the global financial crisis, that the Nigeria economic system and indeed the financial system were too strong and heavily consolidated by some powerful economic indexes and shock absorbers that they cannot be affected by the vagaries of the global financial crisis, claims which were soon proved to be evidences of ignorance and unsubstantiated assumptions when the capital market virtually collapsed losing about N500billion of its capitalization value in one week, due to a sudden crash in the value of major stocks on the exchange, most of which were banking stocks, heralding the gradual deterioration of the capital of the affected banks. .

The dismal pictures in the realities of the poor quality of the risk assets in Nigeria banks revealed the obvious facts that the Nigerian banking system was unable to support the economic system with the needed credit facilities needed by the real sector to boost productivity, to support the much needed economic growth and development.

Non-performing loans of banks reached an alarming rate of 26%, when international standards allow a level of between 9-12 percent and an extreme upper level of 15%. By the current interventions of the regulators, the establishment of AMCON and the effective implementation of its resolution activities, the CBN expects a 5% level of Non Performing Loans (NPL) ratio to total lending across the industry, after AMCON has absorbed the NPL, this will be quite impressive if achieved when compared with the current NPL ratio fluctuating between 25 - 30% pre-AMCON intervention. The aggregate of 15% could be considered acceptable but whatever pushes the aggregate NPL to 25% or beyond, by normal international banking standards, is an impending signal of “systemic distress”

However the hope for possible timely resolution is not totally lost if some reasonable level of transparency in policy making and implementation, can be entrenched by the financial system regulators, while all operators are persuaded to operate under the guided principles of corporate governance for the financial system, Samuel Oni, a Director of Banking Supervision, Central Bank of Nigeria, recently said that 7 out of the 21 locally listed lenders have so far announced positive earnings for 2010; suggesting that balance sheets of such banks are being repaired faster than expected and the credit portfolio being prudently managed, as prescribed by the present regulated procedures.

Therefore, the level of the risk asset proportion to deposit liabilities, before AMCON'S Intervention, is totally unhealthy and unacceptable for the financial system that will support national economic growth and development. It was obvious that something urgent and desperate must be done to reverse the situation to avoid a total collapse of the financial system. Informed financial analysts and experts in the monetary system were united in the opinion that the ensued credit squeeze in the Nigeria economy between the last quarter of 2008 and the present could be closely linked with the huge non-performing assets of banks, despite the huge sums of recapitalization reported by the surviving banks at consolidation in 2005.

EXPECTED KEY STEPS IN CREDIT ASSET MANAGEMENT

While it is true that credit is the largest and the most crucial asset for profit generation in banking business, it is equally true that credit is the most risky and the most volatile asset of banks which requires to be managed professionally. Credit management entails the following key elements:-

- A well articulated credit policy and procedures

- A well managed strong portfolio containing quality risk assets, possessing growth potentials, a broad risk diversification in various sectors of the economy, managed by high net-worth and experienced business moguls with good records, high integrity and stable profit records.

- A well established credit controls and supervision team

- Effectively trained, experienced and competent staff to implement the policy and the portfolio

- Compliance with regulatory authority's provisions.

COMPLIANCE WITH THE PRUDENTIAL GUIDELINES

The prudential guidelines is a set of rules established by the regulatory authorities to guide bankers in the management of bank credits for the purpose of making adequate provision for loan/credit losses from the respective years' profits to avoid loan losses causing capital erosion over time.

When banks comply with the above steps in credit asset management it becomes very difficult if not impossible for banks to run into trouble in their credit asset management.

THE RECENT CENTRAL BANK INTERVENTION IN THE NIGERIAN BANKING INDUSTRY

In a November 26, 2010 speech, Sanusi Lamido Sanisi, the governor of the Central Bank of Nigeria set the framework for future reform efforts after what analysts called 'the dramatic and expensive rescue' of eight insolvent banks in the fall of 2009. In this speech, Sanusi delineated and identified eight interdependent factors as the main causes of the banking crisis:

Sudden capital inflows and macroeconomic stability, poor corporate governance and character failure, lack of investor and consumer sophistication, inadequate disclosure and lack of transparency, critical gaps in regulatory framework and regulations, uneven supervision and enforcement, weaknesses within the CBN, [and] weaknesses in the business environment.

He reiterated the immediate, short-term efforts to rescue nine distressed banks by injecting capital of NGN462 billion and removing certain bank officers and directors of the insolvent banks whom he noted contributed to the rot in the banks. Sanusi announced a critical reform measure - the creation of the Asset Management Corporation of Nigeria (AMCON) as a resolution vehicle designed to remove 'toxic assets' from the banking system. The question asked is whether the CBN intervention to rescue these banks actually produced any benefit or only exacerbated the crisis in the sector. Do these reforms worth the sacrifices, pains and losses Nigerian shareholders, the labour force and bank depositors are currently grappling with as a result of loss of jobs, investment and confidence in the banking sector? Pro-CBN reforms advocates had argued among others that without the intervention, the Nigeria banking industry would have collapsed totally and that the CBN as a super regulator, should be commended for the bold decision to intervene in the banking crisis at a time when government officials find it difficult to act proactively in matter as grievous as this. A report by FSDH securities, a capital market service firm, late January 2012 stated that the total value of the Nigerian banking industry's assets increased by 7.62 percent to N15.74trillion ($96.6billion) by December 2011, as against N14.63trillion ($89.8billion) in December 2009. In the same period, customer deposits is said to have improved by 5.42 percent to N10.99trillion ($67.4billion). Meanwhile, profits is believed to have improved, with First Bank of Nigeria registering an increase to N49bn ($300.7million) before tax in the third quarter of 2011, up to 20 percent from the same period in 2010. Likewise, Zenith Bank announced in October 2011 that its pre-tax profit rose 28.04 percent to N50.13billion ($307.6million) in the nine months to September 2011, compared to N39.15billion ($240.2million) in the same period of 2010, while Stanbic IBTC Bank's profits rose 10 percent in the first nine months of year 2011. Analysts see these growth as a sign that banking reforms introduced by the government following the margin-lending crisis in 2009 are having positive impact.

A school of thought believes the CBN Governor has done some commendable things since being appointed to the office in 2009. For instance, the take-over of the eight banks in 2009 and the injection of funds then were steps in the right direction. Some also applaud him for the enforcement of the CBN Code of Conduct for banks which Prof. Chukwuma Soludo, his predecessor merely paid lip-service to as Governor; the issuance of the new Prudential Guidelines for Loan-loss Provisioning and the creation of the bailout fund for the real sector were other commendable steps he took. The repelled Universal Banking Model was part of strategic initiative to reform the nation's financial system to enhance the quality of banks, ensure financial system stability and promote evolution of healthy financial sector. Following this latest development, this paper believes competition in the Nigerian banking landscape has been anticipated to become vigorous in the coming years if indicators from operators are anything to go by. There has been increasing expectation from bank customers in terms of service delivery in the recent, coupled with CBN's reiteration on financial inclusion. These have raised the bar of competition amongst commercial banks in the bid to retain their hard-won customers and even to attract new ones. On the other hand, the CBN rescue mission has left in its trail, legion of criticisms and disinfections among stake holders in the banking industry. This paper posits that the CBN intervention in the banks without giving the shareholders of the banks opportunity to participate in the recapitalization and key decisions involving the future of their investments is contrary to the principles of fair hearing and global corporate practices. This smacks of a premeditated agenda to deny shareholders of the banks of interests in their investments.

From the beginning of the so-called banking reforms, CBN never gave the shareholders any real chance of re-capitalizing their banks. The Centre for Social Justice, CSJ, came down hard on CBN for revoking the banks' licenses weeks before its deadline. In a statement by its Lead Director, Eze Onyekpere, in Abuja, the centre said CBN should have honoured its own deadline and particularly given the fact that the banks could still find buyers within the period left.

We recall that CBN had given the banks up to the end of September 2011 to recapitalize. We further recall that one of the banks had negotiated with investors to infuse new capital into the bank but CBN refused to approve the investors. Revoking the license of the banks about seven weeks to the expiration of the deadline of September 30 is not only an abuse of powers but a vindictive action without precedence. Why did CBN fix a deadline if it had no intention of respecting same? No economy thrives in arbitrariness of the type perpetuated by CBN. This is simply not the rule of law but the rule of the jungle and the rule of the whims and caprices of CBN. The manner of taking over the three banks appears desperate and intends to overreach any challenges.

First, CBN revokes the banks' license, NDIC creates three bridge banks to run them on a temporary basis, possibly for three years and AMCON acquires the bridge banks the following day. All these were done over a weekend, which are not official working days. This smacks of a premeditated agenda to deny shareholders of the banks of interests in their investments. From the beginning of the so-called banking reforms, CBN never gave the shareholders any real chance of re-capitalizing their banks.

This paper argues that justifying this action in the name of protecting depositors' funds creates the impression that this is the only way that depositors' funds can be protected. This is not true. There are a number of other ways to protect depositors' funds and regulate banks without unnecessarily running down the banking system. CBN failed to consider the interest of shareholders in these banks. This is not the best way to create an enabling environment for private sector investment in the economy. CBN's action creates unnecessary panic and fear and does not promote confidence in the Nigerian economy. This paper queries the takeover of these banks and questions the competence of the 'turn-around experts' who were posted to these banks by CBN. What value did they add to these banks and why were they not able to save the banks from this unwarranted takeover? The CBN's policies since the Sanusi era, from the controversial stress test for banks and the attempt to sell the banks, up to the present arbitrary revocation sent a strong message to the public that the regulation of the Nigerian banking system is not based on legal principles, logic or reason but by sheer dictatorship and unquenchable avarice to consume the hitherto gains Nigerians had enjoyed from the sector and enrich pockets of the oligarchic few in the economic echelon of this country. According to the Centre for Social Justice:

This cannot be the economic democracy we longed for. CBN needs a leadership that understands the role of the banks in the economy and the political economy of the underdevelopment of Nigeria. It does not need a leadership with a score and a grudge to settle, experimenting with people's lives and livelihoods. CSJ calls on the President and the National Assembly to review this take-over in the national interest.

The CBN leadership has shown a lack of capacity to properly regulate the banking sector, a sector which is so vital to social and economic development. It should either be made to change its ways or leave the podium for more informed and experienced personnel.

As Sanusi's rampaging approach to banking reforms continues, the reality, however, is that the banking sub-sector would continue to operate in an environment of uncertainty. This, no doubt, is bad for foreign direct investment because the impression being created is that the sector must anticipate an operating environment based on the mood swings of the CBN Governor. The CBN intervention and subsequent creation of the AMCON has been criticized as there are tell tale signs that the AMCON Management may not as yet have fully familiarized itself with the Nigeria banking legal and regulatory environment. According to Eyieyien of the Vanguard Newspaper, the AMCON Managing Director obviously did not realize that the Nigeria Deposit Insurance Corporation (NDIC) is actually the only government agency empowered by law via sections 38 and 39 of the NDIC Act 2006 to do what AMCON is being asked to do. Rather than face its primary objective of managing the non-performing assets of failed and failing banks it is being led by the CBN and NDIC on a misadventure which they have no competence or experience to handle.

Continuing on the above line of argument, Eyieyien noted as follows:

In response to his assertion that AMCON had been 'very thorough' in the way it has gone about appointing the new management teams, the issue raised was that the evidence was to the contrary and cited the appointment as an Executive Director of an ex-staff of Nigeria International Bank (now Citibank Nigeria) who committed a fraud in 1991 and was sacked by the bank. The MD’s response was to say AMCON 'is not perfect' and that 'it was a mistake'. To his credit, he owned up to the blunder and offered apologies to the nation there on live television. If AMCON could make that kind of blunder about an issue as simple as the appointment of credible Executive Directors and its MD/CEO was compelled to acknowledge error and apologize to Nigerians on national television, then what other 'mistakes' might have already been made but of which we are yet unaware?

This paper warns that we have real problems in the banking industry and the CBN, NDIC and AMCON are clearly not on top of their game in addressing them. The statutory functions of NDIC and AMCON are very explicit and unambiguous. AMCON is not the agency saddled with the power to 'own' a failed bank; that is NDIC's role which is spelt out in sections 38 and 39 of the NDIC Act 2006. The NDIC set up bridge banks on Friday, 5th August, 2011, and 'sold' them to AMCON on Saturday, 6th August, 2011. The following day, AMCON announced new management teams and even released the new bank logos. What uncommon surgical inefficiency! What was the haste all about?

Why intervene 50 clear days before the CBN self-imposed dead-line? What was the hurry for? Could the CBN and NDIC not have waited just ten more days for the then new Minister of Finance, Dr. Ngozi Okonjo-Iweala, to assume office and make an input into the decision-making process? Why the enormous effort to present her with a fait accompli?

We however shudder to ask! The NDIC Act allows the NDIC to operate a bridge bank for up to 5years. What magic is AMCON going to perform which NDIC has been unable or incompetent to do? NDIC would not have had to inject N678.5Billion into the banks as 'Share Capital to achieve 15 per cent Capital Adequacy Ratio' because the law says a bridge bank needs no Share Capital. All NDIC would have done is provide liquidity by way of 90-day 'Accommodation Bills' which it is empowered by law to issue as 'Financial Assistance' to the banks which is one of its fundamental functions. To date, the CBN and AMCON have doled out N1, 298,500,000,000 (One Trillion, two hundred and ninety-eight Billion, and five hundred Million Naira only) to salvage the eight banks it took over in 2009. Is Nigeria so much in need of what to do with money again as it was during the Oil Boom years of the early 1970s such that spending N1.3Trillion to save eight banks has become inconsequential? Is the cost-benefit analysis of a failure resolution option no longer relevant in choosing the most viable path of action which makes the best economic/financial sense? Are we not operating a free market economy where the principle of 'Free Entry and Free Exit' holds sway? This paper maintains that the latest injection of N678.5Billion into three nationalized banks is an unnecessary waste of funds since the NDIC could have statutorily managed them as bridge banks without them needing to have any share capital and NDIC would only provide them temporary liquidity support until they are sold to new owners.

On its part, the Independent Shareholders Association of Nigeria, ISAN, denounced the action of the CBN and urged President Goodluck Jonathan to declare a state of emergency in the banking sector. ISAN described the revocation of the licenses of the banks as “a calculated subversion to the nation's economy and a threat to the people of Nigeria.

AMCON AS A VEHICLE FOR THE RESOLUTION OF BANKING SYSTEM DISTRESS

The purpose of AMCON as far as the CBN is concerned, is the resolution/recapitalization vehicle to acquire non-performing loans from the banks and receive the underlying collateral, fill the remaining capital deficiencies and receive equity and/or preferred shares in the banks that did not pass the audit test; facilitate Merger and Acquisition transactions and strategic partnerships.

For the larger economy, the overriding purpose of AMCON is clearly to return confidence to the banking system. As at the moment, instead of confidence-building, the so many unresolved issues in the operation of the company, doubts and lack of trust are the reality in the market place. (Omoh G, 2011).

It is important to note the following observations of the Managing Director of AMCON Mr. Mustapha Chike Obi, in February, 2011, on the expected roles of AMCON in months ahead:-

- Chike Obi said in February, 2011 that AMCON, apart from buying over the toxic assets of banks, will also take undercapitalized banks to a zero level required shareholders funds pending the coming in of new investors, AMCON will inform and carry along existing shareholders on the relative ownership of the banks, if and when new capital is raised, through new investors or by AMCON subscribing capital to take any of the banks to zero capital level.

- To resolve financial distress and to recapitalize to a zero level required shareholders capital in the short while.

- Chike Obi estimated that 900billion naira would be needed to absorb total nonperforming loans (but in the face of current realities, to provide for all aggregated margin loans requiring to be purchased from all lenders, over 2.5trillion naira will be required by AMCON to purchase all marginal non performing loans in the banking system) so Chike –Obi grossly under estimated. Yet a further N1.6trillion is required, to bring rescued lenders back to zero capital level from negative shareholders funds.

- AMCON's principal role is to absorb by buying over from banks, non-performing loans; and to restore shareholders funds back to zero, from the required minimum level. New investors will be needed to return the lenders to minimum capital adequacy and bring them off CBN lifeline. However the recent events of CBN nationalizing three of the rescued banks, eight weeks before the deadline the same CBN gave all rescued banks to recapitalize, is grossly contrary to every principle of transparency and fairness to all concerned. It is just that the maximum ruling authority has rolled out their instructions and no one is authorized to question their authority. Yet this is not in conformity with the guidelines and procedures which Chike Obi announced in February, 2011, with regard to the need for rescued banks to find new investors to provide fresh capital.

It needs to be stated that the Asset Management Corporation of Nigeria was part of former CBN Governor Charles Soludo's 13 points reform agenda of 2004 – 2005. However for various unrationalized reasons both on the part of the management of the CBN under the governorship of professor Soludo, on the one hand, which felt they had no sufficient need to warrant the use of this vehicle at that time, to deal with the issues of nonperforming loans emanating from the outcome of the consolidation process and the National Assembly on the other hand which in its usual tradition did not give the expected prompt attention to the passage of the bill resulted in the AMCON bill being abandoned as at then.

The AMCON instrument became handy during the latest CBN reform agenda under Mallam Lamido Sanusi. The new AMCON ***(Enabled by Act No 4 of 2010)*** is jointly established by the Central Bank of Nigeria and the Federal Ministry of Finance with a paid up capital of N10billion, and a total authorized capital of N20billion. AMCON is empowered to source funds locally and internationally to pursue its assignment. The Board was constituted by appointments made by both Central Bank of Nigeria and the Federal Ministry of Finance according to the provisions of the enabling law.

Aliyu Balogun was appointed the chairman of AMCON while Mustapha Chike Obi was appointed as the Managing Director to head the other executive directors and management team, in the running of the organization’s business. AMCON’s enabling Act was signed into law by President Jonathan, on 19th July, 2010; after the National assembly has passed it into law, and its operations commenced on 11th August, 2010 the Board and Management have been put in place.

EXPECTED ASSET MANAGEMENT PROCEDURES OF AMCON

The timely recognition of the potentials and the consequent establishment of AMCON in resolving the credit and “special assets” crisis in the Nigerian financial system; is commendable. It is also observed that CBN management pursued with vigor the emplacement of the legal framework and intensifying the necessary follow up on the National Assembly to pass the AMCON bill which was done without the usual delays. .

Chronological order of Asset Management procedure:-

(a) AMCON establishes the procedure to verify and list the non performing Assets that would be purchased from the lenders, this was the first task of AMCON management soon as it assumed office, verifying and listing the assets to take over from lenders under the conditions already stated by AMCON and communicated to the banks.

(b) AMCON sets the machinery to determine the price at which non performing loans would be acquired from banks. Presently the pricing is established such that AMCON discounts the debts taken over at 30%; that is only 70% of the value of the assets is paid to the lenders, AMCON takes 30% of the value for its services.

(c) All lenders with non-performing loans are required to apply to AMCON to buy the non performing assets, if such assets qualify under AMCON’s pre-determined conditions.

Lenders are categorized into two for this purpose, the first group consists of banks that were rescued by CBN intervention between August and October, 2009 (involving the injection of N620billion) and the second group consisting of all other lenders who were not involved in the rescue mission but are carrying a heavy burden of nonperforming loans; for which there is no hope of timely collection or recovery.

(d) AMCON reviews the applications and in accordance with the earlier stated conditions, will select the loans that can be purchased; no fraudulent or unauthorized loans are permitted to be purchased. Twenty one banks applied to AMCON for special assets sales and AMCON signed the agreement of purchase with the 21 banks on 31st December, 2010.

(e) In exchange for the loans AMCON issues bonds to the banks. The bonds will be guaranteed by the Federal Ministry of Finance and tradable alongside other government funding securities tradable on the stock exchange to create fresh funds for the banks to make new credits. The first tranche of AMCON bond for a total sum of N1.15trillion was delivered to 21 lenders at a yield of 10.125% in payment for AMCON approved non performing loans.

(f) AMCON thereafter embarks on restructuring and recovery drive on the loans acquired from the banks, AMCON is expected to have achieved full recovery of all loan purchased within the 10years specified for its existence; full recovery of loans means that AMCON would have recovered its full commitment on the cost of purchasing the loans and also meeting its costs with the 30% discount it took on the value of the loans, such that its operational activities will not have any leftover for the Nigerian tax payer.

OBJECTIVES OF AMCON

1. Special Assets, management and recovery as a distress resolution vehicle in situations of banking management crisis.

2. Banking crisis resolution as a result of other causes other than credit.

3. Provision and release of instant funding for liquidity and working capital from proceeds of non-performing loans purchased by AMCON; when banks carry exceptional large non performing loans.

4. Taking away from the financial system the burden of bad debt recovery and thereby releasing a lot of man hours for more productive purposes in the banking system, strengthen bank balance sheets, improving credit Asset, and improving credit Assets/deposit liability ratio.

5. Providing partnership (where solicited and agreed to by existing shareholders) in shareholdings to provide share capital as shareholdings and partners to boost the capital of the partnering bank.

POSSIBLE GAINS FROM THE OPERATIONS OF AMCON

It is very likely that the following advantages will accrue to the banking system and the economy if AMCON efficiently and transparently deliver its functions:-

(i) The banking system will become healthier financially (both for liquidity and capital) as all criteria for measuring efficiency and effectiveness will improve.

(ii) Human capital deployment can be more efficient as it becomes free of the burden of special assets management now transferred to AMCON by banks, the labour and time earlier deployed to debt recovery and bad debt repackaging becomes available for more productive and profitable purposes.

(iii) Bank capitalization becomes easier as the new level of efficiency of banks makes them more attractive to new investors.

(iv) Banks are more able to lend to the economy for productive purpose, than before as non-performing loans will no longer be a hindrance to lending and more resources are released to banks from redeemed non-performing loans sold to AMCON from time to time.

(v) Banks can now return to their traditional responsibilities, offering efficient services as AMCON takes over the burden of debt recovery.

These benefits will only be realized if both AMCON and the banks maintain right behaviour and play by the established rules. AMCON must truly be independent and allowed to run professionally in delivering its mandate; once there is administrative interference, all the hope for an enduring strengthening of the banking system by AMCON should be considered lost.

In the words of Mr Mustafa Chike-Obi recently, AMCON is already breaking through having borrowed N5.7trn from the market with Federal government guarantee as at February 3rd 2014, it used N3trn to pay back depositors and used N1.7trn to buy non- performing loans. He said AMCON which have 12000 loans has recovered about 51per cent, which is N861.534Billion meaning it has recovered more money than it put out for those loans.

DOUBTS ON WORKABILITY OF AMCON

A great number of experts of finance have doubts and anxieties on the activities of the financial system regulatory authorities designing and empowering AMCON through the various clauses and booby traps hidden in the enabling Act to use AMCON as a smoke screen to take over certain banks, under the cover of resolving operational challenges. Nationalizing the banks, to intimidate current shareholders, that their shares have been written off and cancelled by the Act of Nationalization.

It is the opinion of some people that AMCON is only used to supervise the running of such banks for a few years, and thereafter the banks are sold for the purported beneficiaries who have been waiting patiently to acquire the banks as designed in the smoke screen script acted by AMCON.

These fears are gradually becoming very real considering the recent events, witnessed in the banking system; when 3 of the rescued banks were suddenly nationalized by the CBN, nullifying the right of existing shareholders and constituting all rights of ownership in AMCON. This is the picture of the suspicion of Nigerians; shareholders of banks and the generality of the business community on the unfolding of events through the various dictatorships like pronouncements on banking operations policies and procedures in the last two years.

As it stands today, every institution, situation, policies and procedures, relating to banking and financial management in Nigeria is dependent on AMCON, all banks, rescued or unreached are dependent on AMCON, the stock market is dependent on AMCON, the bonds market has already been saturated by all existing bonds, the private sector is dependent on AMCON, to enable banks lend to them, the growth and development of the Nigeria economy is technically dependent on AMCON, potential investors both local and international in most Nigeria ailing banks are depending in AMCON, investment banks and Brokerage firms are depending on AMCON. Will AMCON not eventually hold all Nigerians, the financial system, the capital market, the bonds market, body of investors, both local and international and ultimately the entire Nigerian economy to ransom? Only time will tell. We are patiently waiting and watching the turn of events.

AMCON has distinct and clear roles to play in special assets management in banking crisis, but the current situation where all organs of the financial system, government and private sector investors and businesses are all now dependent on the whims and caprices of AMCON create room for absolute suspicion, doubts and anxieties.

ASSET MANAGEMENT EXPERIENCES FROM ABROAD.

AMCON may play a significant role in streamlining the operational stability and capital adequacy of banks, as observed in Sweden and the United States of America, both are places where the interventions did not yield much significant results neither for improved volume of lending to the productive economic sectors, nor produced any significant inducement for economic development, after the interventions but as it is now, too much is being expected from AMCON, with the great powers to do and undo, that is loaded in the AMCON enabling Act.

We need to exercise caution while observing and monitoring the activities of AMCON in the next few years to evaluate its actual potentials before we all end up getting more sunk into deeper financial and economic crisis.

The opinion of Citibank research unit in a recent research report on Nigerian banks is food for thought on the over bloated expectations from AMCON, the report says- “AMCON certainly is not the final solution for the affected banks. In our view, it will not be sufficient to make them competitive, even if N1.5trillion were injected solely into the affected banks through Asset purchase, more than $10 billion will still be needed for recapitalization. “To a large extent we are in agreement with the Citibank research unit report. Too much expectation is being put on AMCON capacity and potentiality to turn around and sustain its role on the activities of the Nigeria financial system.

In addition to that, the CBN is not viewing AMCON as an institution with a time bound existence. Perpetuity as another hidden agenda is grossly reflected in the expectations, operational profile and the diversity of the powers conferred on AMCON in the enabling law. Except the CBN can stringently supervise and control the activities of AMCON over the years, which is doubtful AMCON may in a few years to come be discovered to be adding to, and compounding the challenges it was established to resolve, particularly in the exceptionally corrupt atmosphere of Nigeria. By the time this discovery and our anxieties become a reality, huge amounts of resources would have been lost. But there is still a lot of room for correction if the authorities will allow a second thought on their views.

SUMMARY, RECOMMENDATIONS AND CONCLUSION

This study attempted to x-ray AMCON as an institution and also looked at matters arising from its creation and operations. It also reviewed the activities that could lead banks into lending difficulties, and financial crises. If banks prudently manage their operations including lending activities, observing and respecting operational and regulatory rules and procedures as dictated by banking regulators, complying with corporate governance requirements; there would be little or no challenges capable of warranting the need for AMCON. Bankers have randomly chosen to be disobedient, to the provisions of regulatory authorities (even when it is important not to do so) they cut corners to cheat customers, collect unauthorized charges, set unreasonable and mindless minimum account balance limits, that depositors cannot afford, pass unauthorized debit charges to customers accounts without authority, to accumulate more profits. They lend without observing principles of lending. Bank board and management engage in insider abuses to fraudulently steal, borrow huge amounts of money without authority, or appropriate bank's money to themselves,

The Central Bank of Nigeria and other regulators only carry out fragmented and piece meal regulations rather than an all institution inclusive financial sector regulations. Bukky O (2010).

All these are issues that are fundamentally challenging to the Nigerian financial sector causing the spate of the crisis necessitating the need for the establishment of AMCON.

Given the experiences of the past and the reports of CBN, below are some suggested recommendations for the successful operation of AMCON in Nigeria.

1. **Administrative and Operational Autonomy for AMCON**

T he administrative and operational activities of AMCON should be given full autonomy within the context of the banking sector and the legal system, while guaranteeing maximum professionalism in its operations. There should be limited interference from the executive arm of government.

2. **Full Compliance with Corporate Governance Structure**

The AMCON board and Management must comply fully with corporate governance structures put in place and this starts with having the board and management comprise of persons tested, proven integrity and experience, driven by the desire to serve, transparent, committed to achieve the objectives of the company within the set time frame. Whereas a high degree of transparency would foster market discipline in the AMCON the reverse would be the case. This is because safety and soundness of an institution depend on a good governance culture.

3. **AMCON ownership should be a Joint ownership between Government and the Private Sector.**

The interference from government should be minimal as well as the involvement of the key government agencies like CBN and the NDIC. However, government commitment, support and the provision of adequate funding is required on a sustainable basis. We strongly suggest a joint ownership between the government and private sectors (including the banks). However, we do not expect the government to starve the body of funds especially when they fail to dance to their tune has we have noticed in other bodies like the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices Commission (ICPC), Code of Conduct Bureau, Police, Judiciary etc.

4. **Government should provide a suitable Macro-Economic atmosphere.**

Another key requirement for success is when Government endeavor to provide the needed enabling environment and strong economy that is growing at a reasonable and sustainable rate e.g. price stability, stable exchange rate, single digit inflation etc would provide a better environment for the timely realization of the goals of the AMCON which are to promote financial recovery by addressing the debt overhang of banks occasioned by NPLs; acquire, restructure, manage and/or dispose NPLs in the banking system; recover and sell off collaterals for NPLs as quickly as possible and maximize recovery value to reduce public cost.

5. **Harmonization of working relationship of all vital Regulatory and Government Agencies**

The success of AMCON is also seriously hinged on a good harmony of all vital regulatory and government agencies especially the judiciary, money and capital markets and other agencies. With the Freedom of Information bill already passed by the National Assembly individuals are free to give information freely and voluntarily without harassment from the police.

6. **Asset pricing process must be Realistic and Transparent to all**

There is no doubt some banks have contributed directly or indirectly to the delinquency of Non-performing accounts/loans through fraudulent practices and insider abuses, the pricing and acquisition of non-performing loans must be at arm's length, transparent and realistic.

7. **Requisite Legal Framework is paramount.**

Providing the requisite legal framework for AMCON is sine qua non in the existence and survival of this all important institution. This can be by way of incorporation as a limited liability company with perpetual succession or by legislation, through an Act of the National Assembly. The CBN and the NDIC can, under the combined effect of sections 27(1) (i) of the CBN Act and Sections 5 (10), 9b & 28 (1) of the NDIC Act, legitimately incorporate an AMC. Every documentation and procedures required for the setting up of AMCON should be followed to the later. This is to avert any aggrieved person taking legal action against the body in future. The body should also be given maximum powers to seize assets of debtors, guarantors and directors of companies, including those in the custody of third parties, by taking physical possession of personal properties and sealing-off of real properties whether used as collateral or not.

8. **Effective Judicial Process is a must for quick Recoveries.**

The quick recovery efforts which is the ultimate climax in the operations of AMCON will not materialize until something urgent is done about the present judicial arrangement of NPLs by banks through debt recovery action at the High court, under the Failed Banks Act or through winding-up proceedings at the Federal High Court (FHC) is cumbersome, ineffective and protracted. The AMCON should be able to initiate and institute debt recovery proceedings at the Federal High Court (FHC) under special rules of procedure.

9. Development of a Secondary Market for the Sale of Toxic Loans.

There is the urgent need to create a secondary market where the toxic loans can be traded. AMCON should be able to take up non-performing loans of banks and also undertake assets securitization (bonds) and debt factoring, for the purpose of enhancing the quality of the balance sheet of banks and improving their liquidity. Before taking up non-performing accounts of banks they should be thoroughly investigated to ensure that they are genuine and valid debts. Knowing the fraudulent tendencies of Nigerians as a people the fear is that bank staff is capable of faking accounts of customers as debts because they will be taken over by AMCON.

10. Continuous Personnel Training and Development for Efficiency

It is pertinent that competent, tested and experienced personnel should be employed by AMCON. Strong premium should be on ensuring that the crop of staff of the corporation is on continuous training and development to match the ever increasing challenges in Nigerian Financial system. Induction course will not be out of place for newly recruited staff while domestic and international courses should be organized for existing staff to update their knowledge on the dynamics of the Nigeria financial services sector.

In conclusion, Banks regular risk monitoring activities are imperative as they offer the advantage of quick detection and correction of deficiencies in policies, processes and procedures for managing risks. Prompt detecting and addressing of identified deficiencies can substantially reduce the potential frequency and severity of a loss. Regular reviews should be carried out by the internal audit of banks in conjunction with staff of AMCON to analyze the control environment and test the effectiveness of implementing controls thereby ensuring that business operations are conducted in a controlled manner. The banks inspectors and AMCON staff should be properly focused on the significant risk as identified by management as well in auditing the risk management process across the banks.

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