

A BILL

FOR

AN ACT TO AMEND SECTIONS 2, 16(5), 34(1), 34(2), 35, 46(2), 48, 60, 61 AND 62 OF THE ASSET MANAGEMENT OF NIGERIA ACT, 2013

Sponsored by Senator Bassey Otu

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1 1. Section 2 of the Act is hereby amended by the deletion of sub- Amendment of
2 section (3) of the said section. Section 2

3 2. Section 16 of the Act is hereby amended by deleting the existing Amendment of
4 subsection (5) and replacing same with a new subsection (5) as follows: Section 16(5)

5 (5) A Member of the Board or any Employee of the Corporation
6 shall not either directly or indirectly be involved in the purchase of assets
7 acquired by the Corporation as part of, or in pursuance of, the acquisition of
8 an eligible bank asset or the enforcement or realization of any rights relating
9 to an eligible bank asset acquired by the Corporation.

10 3. Section 34 of the Act is hereby amended by: Amendment of
11 (a) Deleting from subsection (1) the words "and subject the Section 34

12 provisions of this Act become subject to all of the obligations" appearing
13 after the word "powers" and the words "and obligations" appearing after the
14 word "rights" in the last line;

15 (b) Inserting a new paragraph (c) to subsection (2) as follows:

16 “(c) the pendency of an action before a court of law in respect of the
17 eligible bank asset, save where there is in force and subsisting, a valid order
18 of court, made after due notice to the eligible financial institution from
19 which the eligible bank asset is to be acquired, expressly restraining such
20 acquisition.”

21 4. Section 35 of the Act is hereby amended by inserting new Amendment of
22 subsections (5) and (6) as follows: Section 35

1 “(5) For the purpose of the provisions of the Limitation Law of a State
2 or the Limitation Act of the Federal Capital Territory, with respect to any debt
3 owed to the Corporation by reason of its acquisition of an eligible bank asset,
4 time shall begin to run, and the cause of action deemed to arise, from the date of
5 the purchase of the eligible bank asset.”

6 “(6) Where action has already been commenced by an eligible
7 financial institution prior to acquisition of the eligible bank asset by the
8 Corporation, the Corporation shall at any time after the acquisition of the
9 eligible bank asset the subject of any such action, be entitled to:

10 (a) continue with the action in its name or as a third party entitled to
11 any judgment debt, but not any liability in respect of the claim or any associated
12 counterclaim or cross claim for which the assignor of the eligible bank asset
13 shall be liable; or

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

Amendment of
Section 48

19 5. Section 48 of the Act is hereby amended by inserting new sub-
20 sections (3), (4), (5), (6), (7), (8), (9), and (10) as follows:

21 “(3) For the avoidance of doubt, the powers of a receiver acting in
22 pursuance of the provisions of this section, shall be exercisable over all the
23 assets and entire undertaking of the debtor company notwithstanding that only
24 a part of the assets of the debtor company was charged, mortgaged or pledged
25 as security in relation to the eligible bank asset acquired by the Corporation.
26 Provided that such exercise of power shall be without prejudice to the existing
27 rights of secured creditors or third parties in such assets.

28 (4) Where a receiver under this section elects to manage the affairs of
29 a debtor company or other debtor entity, in pursuance of paragraph (c) of
30 subsection (2) of this section, it shall give notice of its election by publication in

1 final and conclusive of the amount which the concerned Eligible Financial
2 Institution is liable to pay into the Resolution Cost Fund.

3 (6) The Central Bank of Nigeria shall be authorized to debit, for the
4 benefit of the Resolution Cost Fund, the account of any Eligible Financial
5 Institution which fails to pay the levy imposed under this Act within the time
6 limit specified in this Act to the tune of the amount so unpaid by such
7 Eligible Financial Institution, and to pay into the Resolution Cost Fund any
8 moneys of any such Eligible Financial Institution in its custody or over
9 which it has control, in satisfaction of the liability of such Eligible Financial
10 Institution under this Act.

11 64. With effect from the commencement date of this Act, all
12 funds standing to the credit of the account maintained with the Central Bank
13 of Nigeria for the receipt of contributions made by Eligible Financial
14 Institutions and the Central Bank of Nigeria to meet banking sector
15 resolution costs in pursuance of a memorandum of understanding dated 14
16 January 2010 among the Eligible Financial Institutions and the Central
17 Bank of Nigeria shall be transferred to, and be vested in the Resolution Cost
18 Fund; and the said memorandum of understanding shall, without any other
19 assurance other than this provision, be deemed terminated.

Vesting of Certain
Funds in the
Resolution Cost
Fund

20 65. -(1) Subject to subsection (2) of this section, the Resolution
21 Cost Fund shall be utilized exclusively for the following purposes:-(a)
22 meeting the obligations of the Corporation arising from debt securities
23 issued by the Corporation in pursuance of this Act, if the Corporation is
24 unable to meet such obligations as and when due from its resources
25 including the proceeds of sale and management of Eligible Bank Assets it
26 acquires from Eligible Financial Institutions; and

Purpose of the
Resolution Cost
Fund

27 (b) meeting expenses and costs specifically and incurred for the
28 administration and management of the Resolution Cost Fund, up to an
29 annual limit of an amount equivalent to 0.5 per cent of the total amount paid
30 into the Resolution Cost Fund for the calendar year in which the expense or

1 cost is incurred.

2 (2) Upon the utilization of any sums standing to the credit of the
3 Resolution Cost Fund to meet the purposes specified in paragraphs (a) and (b)
4 of subsection (1) of this section, the Corporation shall refund any sums so
5 utilized to the Resolution Cost Fund as soon as the Corporation becomes able
6 to effect such refund out of its general revenue and assets.

Adjustments to
Levy to meet
Deficiency or
Eliminate
Excess

7 66. -(1) On an annual basis during the tenor, the Board of Trustees in
8 conjunction with the Central Bank of Nigeria and the Corporation shall
9 determine whether the aggregate of the contribution of the Central Bank of
10 Nigeria to the Resolution Cost Fund at the level prescribed in, or pursuant to,
11 subsection (1) of section 62; and the proceeds of the annual levy imposed on
12 Eligible Financial Institutions at the level prescribed in, or pursuant to,
13 subsection (1) of section 63, over the course of the tenor, ("Total Funding") will
14 be sufficient to meet, over the course of the tenor, the obligations of the
15 Corporation arising from debt securities issued by the Corporation in
16 pursuance of this Act, which the Corporation, based on its funding model, will
17 be unable to meet or, whether the Total Funding will, over the course of the
18 tenor, be in excess of the amount required to meet the said obligations of the
19 Corporation.

20 (2) Where, in pursuance of subsection (1) of this section, a
21 determination is made that the Total Funding will be insufficient; the Governor
22 shall be mandatorily required to adjust upward the number of basis points
23 prescribed in, or pursuant to subsection (1) of section 63, to such level as is
24 necessary to ensure that the Total Funding is sufficient, over the course of the
25 tenor, to meet the obligations of the Corporation arising from debt securities
26 issued by the Corporation in pursuance of this Act, which the Corporation will,
27 based on its funding model, be unable to meet from its own resources.

28 (3) Where, in pursuance of subsection (1) of this section, a
29 determination is made that the Total Funding will be in excess of the amount
30 required; the Governor shall be mandatorily required to adjust downward the

1 number of basis points prescribed in, or pursuant to subsection (1) of section
2 63, to such level as is necessary to eliminate the excess.

3 (4) An adjustment made by the Governor in pursuance of
4 subsections (3) and (4) of this section, shall be published in the Gazette, and
5 shall come into effect at the beginning of the financial year immediately
6 following the year in which a determination is made in pursuance of
7 subsection (1) of this section.

8 67. Any annual levy paid by an Eligible Financial Institution in
9 pursuance of this Act, and all contributions made by an Eligible Financial
10 Institution referred to in section 63 of this Act, shall be deductible for the
11 purposes of the companies' income tax of the paying Eligible Financial
12 Institution, under the Companies Income Tax Act.

Tax Deductibility
of Annual Levy
and Vested
Contributions

13 68. An Eligible Financial Institution that is in default of payment
14 of the levy imposed under this Act or any part thereof shall be prohibited
15 from paying dividends or other like distribution to its shareholders, and from
16 paying any bonuses however to its directors or employees, while such
17 payment default continues.

Prohibition on
Payment of
Dividend and
Bonuses by
Defaulting
Eligible Financial
Institution

18 69. -(1) There is hereby established for the Resolution Cost Fund, a
19 Board of Trustees which shall consist of:

Establishment
and Composition
of Board of
Trustees

20 (a) two representatives of the Central Bank of Nigeria, whom shall
21 be appointed by the Central Bank of Nigeria from among its Deputy-
22 Governors, other than the Deputy-Governor in charge of Financial System
23 Stability, one of whom shall be appointed by the Governor as the Chairman;

24 (b) four representatives of Eligible Financial Institutions to be
25 appointed by the Eligible Financial Institutions for among officers of four of
26 the Eligible Financial Institutions not below the level of a director, on a two
27 year rotational basis; and

28 (c) and 2 (two) ex-officio members, one each to be nominated by
29 the Federal Ministry of Finance, and the Nigerian Deposit Insurance
30 Corporation, from among their respective officers not below the level of a

Duties of the
Board of Trustees

1 director.

2 70. -(1) The Board of Trustees shall have responsibility for the
3 supervision, administration and management of the Resolution Cost Fund and
4 shall in addition to such other duties specified in this Part IX of this Act have
5 and discharge the following duties:

6 (a) collection of the contributions and levies levied under this Act and
7 as and when due;

8 (b) disbursement of moneys standing to the credit of the Resolution
9 Cost Fund to meet the obligations specified in section 65 of this Act;

10 (c) formulating investment policies for the Resolution Cost Fund and
11 causing moneys standing to the credit of the Resolution Cost Fund to be
12 invested in accordance with the provisions of this Act;

13 (d) formulating policies for running the Secretariat; and

14 (e) performing other functions that are consistent with the purpose of
15 the Resolution Fund as specified in section 65 of this act.

16 (2) The Board of Trustees may delegate any part of its responsibilities
17 under this Act as it may deem fit and may appoint independent service
18 providers, professional advisers and consultants for the performance of any of
19 its functions and for running the Secretariat.

20 (3) In the discharge of their responsibilities and duties, members of
21 the Board of Trustees shall be deemed to stand in a fiduciary relationship with
22 the Corporation and shall act with due care and skill, in utmost good faith and in
23 the best interest of the Corporation.

Tenure, Cessation
of Membership,
and Casual
Vacancy

24 71. -(1) Subject to subsection (1) of this section, members of the
25 Board of Trustees, except the members nominated by Eligible Financial
26 Institutions who shall only hold office for a term of two years, shall hold office
27 for as long as they continue to hold the office by virtue of which they were
28 appointed to the Board of Trustees.

29 (2) A member of the Board of Trustees shall cease to hold office as
30 such member if he ceases for any reason howsoever to hold the office by reason

1 of which he holds membership of the Board of Trustees.

2 (3) If a vacancy occurs as a result of the death, resignation,
3 retirement, disqualification or removal of a member of the Board of
4 Trustees, the parastatals or Eligible Financial Institution that such member
5 represents on the Board of Trustees shall nominate another of its members to
6 fill the vacancy so occasioned, for the remainder of the term of office of, the
7 member whose death, resignation, retirement, disqualification or removal
8 occasioned the vacancy.

9 72. The Board of Trustees shall meet for the conduct of its business
10 at the Secretariat or such other place at such times and on such days at the
11 Chairman may decide; and the Board shall, subject to the provisions of this
12 Act, have power to regulate its proceedings.

Proceedings of
the Board of
Trustees

13 73. No remuneration shall be payable to members of the Board of
14 Trustees, save such sitting allowances as the Governor may from time to
15 time determine. Provided that members of the Board of Trustees shall be
16 entitled to be reimbursed in full for all reasonable expenses incurred in
17 pursuit of the business of the Board of Trustees and in the discharge of their
18 functions.

No Remuneration

19 74.-(1) There is hereby established for the Board of Trustees, a
20 Secretariat which shall be situate at the head office of the Central Bank of
21 Nigeria, or such other place as the CBN may determine, and shall be staffed
22 by such number of persons to be seconded from all or any of the Central
23 Bank of Nigeria, the Federal Ministry of Finance, the Nigeria Deposit
24 Insurance Corporation and an Eligible Financial Institution as the Board of
25 Trustees may from time to time determine. The Secretariat shall have such
26 functions as are, from time to time, prescribed by the Board of Trustees.

Secretariat of the
Board of Trustees

27 (2) Persons seconded to the Secretariat shall during the period of
28 the secondment remain employees of the seconding institution and the
29 seconding institution shall continue to be responsible for the remuneration
30 of such employee.

Custody of
Money and
Appointment of
Custodians

- 1 75. -(1) All moneys standing to the credit of, or other assets of the
2 Resolution Cost Fund shall be held by the Central Bank of Nigeria or, at the
3 instance of the Central Bank of Nigeria, with a custodian appointed by the
4 Board of Trustees for that purpose in accordance with a written custodial
5 services agreement entered into between the Resolution Cost Fund and the
6 custodian in form and substance satisfactory to the Board of Trustees.
- 7 (2) A prospective custodian shall be engaged by the Board of Trustees
8 through open and competitive selection procedures. To qualify for
9 appointment, the prospective custodian shall:
- 10 (i) be a limited liability company duly incorporated In accordance
11 with the laws of the Federal Republic of Nigeria;
- 12 (ii) be a licensed financial institution or be wholly/jointly owned by a
13 licensed financial institution(s) with a combined minimum net worth of N25
14 billion unimpaired by losses;
- 15 (iii) have, or its parent company/companies, which have a combined
16 total balance sheet of at least N125 billion;
- 17 (iv) be a reputable custodian company with excellent track record;
- 18 (v) have the professional and technical capacity to provide custodial
19 services as contemplated under this Act;
- 20 (vi) never have been a custodian of any assets which was mismanaged
21 or has been in distress due to any fault, either fully or partially by the custodian;
- 22 (vii) never have been nor is a debtor of the Corporation or the obligor
23 whether directly or indirectly of in relation to an eligible bank asset;
- 24 (viii) possess appropriate information and communication
25 technology that can adequately cater for online real-time transactions and for
26 keeping proper accounting records;
- 27 (ix) have a system of internal controls which ensures that the assets
28 under its custody are safeguarded and segregated and records adequately
29 reflect the information they purport to present;
- 30 (x) be capable of providing a guarantee, either by itself or by through

1 its parent company/companies, to the full sum and value of assets held or to
2 be held by it, in bank deposits and other liquid assets;

3 (xi) not be an entity or company in which any fund manager
4 appointed by the Board of Trustees in relation to the Resolution Cost Fund,
5 or any of the subsidiaries of such fund manager has an aggregate
6 shareholding exceeding 5% of its issued and paid capital; and

7 (xii) meet such other additional requirements or conditions as may
8 be prescribed from time to time by the Board of Trustees.

9 (3) In addition to meeting the criterion stipulated in subsection (2)
10 of this section, an applicant shall only be appointed as a custodian if it
11 procures, to the reasonable satisfaction of the Board of Trustees, loss
12 insurance cover and fidelity bond in such amount as the Board of Trustees
13 may stipulate from time to time.

14 76. -(1) All moneys standing to the credit of the Resolution Cost
15 Fund which are not immediately required to be utilised shall be invested in
16 any of the following:

Investment of
Resolution Cost
Fund

17 (a) debt securities issued, or which are guaranteed by the Federal
18 Government of Nigeria or the Central Bank of Nigeria;

19 (b) with the prior written consent of Central Bank of Nigeria, debt
20 securities issued, or which are guaranteed by the central government of a
21 sovereign country;

22 (c) with the prior written consent of Central Bank of Nigeria, debt
23 securities issued, or which are guaranteed by an international financial
24 institution of which Nigeria is a member;

25 (d) debt securities issued by the Corporation;

26 (e) repurchase agreements fully collateralised by debt securities of
27 the governments and institutions mentioned in paragraphs (a)-(c) of this
28 subsection (1), with a maximum maturity of 30 days; and

29 (f) such other debt securities or instruments that the Board of
30 Trustees may with the approval of the Central Bank of Nigeria, from time to

1 time, designate;

2 Provided always that in the case of paragraphs (b), (c), and (e) above, such debt
3 securities or instruments shall be freely tradable securities.

4 (2) All bonuses, profits and other returns which accrue on investments
5 made in pursuance of subsection (1) of this section shall form part of the
6 Resolution Cost Fund and may be re-invested in accordance with subsection
7 (1) of this section.

Appointment of
Fund Managers

8 77. -(1) For the purposes of managing and investing moneys standing
9 to the credit of the Resolution Cost Fund as required under subsection (1) of
10 section 72, the Board of Trustees shall appoint independent third party
11 professional fund managers who shall act on behalf of the Board of Trustees to
12 administer and manage the Resolution Cost Fund and invest, re-invest moneys
13 standing to the credit of the Resolution Cost Fund and accretions thereto in
14 accordance with the provisions of this Act and fund management guidelines to
15 be issued from time to time by the Board of Trustees.

16 (2) The prospective fund manager shall be appointed by the Board of
17 Trustees through open and competitive selection procedures. To qualify for
18 appointment, the prospective fund manager shall:

19 (a) be a limited liability company duly incorporated accordance with
20 the laws of Nigeria;

21 (b) have a minimum paid up share capital of N150,000,000 (One
22 Hundred and Fifty Million Naira) or such higher sum as may be prescribed,
23 from time to time, by the Board of Trustees;

24 (c) be duly registered with the Securities and Exchange Commission
25 as a portfolio/fund manager and be in good standing with the Securities and
26 Exchange Commission;

27 (d) possess a proven track record of managing funds amounting to
28 N10,000,000,000 (Ten Billion Naira) or more (or such other amount as may
29 from time to time be prescribed by the Board of Trustees), in Nigeria;

30 (e) not be engaged in any business other than the management of

1 funds and assets;

2 (f) not have compounded its debt or failed to honour its lawful
3 obligations;

4 (g) never have been a manager or administrator of any funds or
5 assets which were mismanaged or has been in distress due to any fault, either
6 fully or partially, of the prospective fund manager or any of its subscribers,
7 directors or officers;

8 (h) never have been nor is a debtor of Corporation or the obligor
9 whether directly or indirectly in relation to an Eligible Bank Asset;

10 (i) have a management team comprising at least two sponsored
11 individuals duly registered with the Securities and Exchange Commission;

12 (j) possess appropriate information and communication
13 technology to adequately cater for online real-time transactions and for
14 keeping proper accounting records; and

15 (k) meet such other additional requirements or conditions as may
16 be prescribed from time to time by the Board of Trustees.

17 (3) In addition to meeting the criteria stipulated in subsection (2) of
18 this section, an applicant shall only be appointed as a fund manager if it
19 procures, to the reasonable satisfaction of the Board of Trustees, loss
20 insurance cover and fidelity bond in such amount as the Board of Trustees
21 may stipulate from time to time.

22 (4) The appointment of a fund manager in pursuance of the
23 provisions of this section, and the terms of such appointment, shall be
24 documented in a written contract, between the Resolution Cost Fund and the
25 fund manager to be known as the Fund Management Contract.

26 (5) No fund manager appointed in pursuance of this section shall
27 directly or indirectly have or keep custody of any or maintain any settlement
28 accounts in relation thereto.

29 78. -(1) At the end of the tenure, the Resolution Cost Fund shall
30 stand dissolved and the Board of Trustees shall appoint on such terms as it

1 deems fit, one or more liquidators to wind up the affairs of the Resolution Cost
2 Fund; realise all assets of the Resolution Cost Fund and to distribute, in
3 accordance with subsection (5) of this section, the proceeds of realisation and
4 all moneys then standing to the credit of the Resolution Cost Fund.

5 (2) The following persons shall not be eligible to be appointed as a
6 liquidator of the Resolution Cost Fund:

7 (a) an infant;

8 (b) a person of unsound mind;

9 (c) a body corporate;

10 (d) an undischarged bankrupt;

11 (e) an employee or officer of an Eligible Financial Institution;

12 (f) a member of the Board of Trustees; or

13 (g) any person convicted of any offence involving fraud, dishonesty,
14 official corruption or moral turpitude;

15 (h) never have been nor is a debtor of the Corporation or the obligor
16 whether directly or indirectly in relation to an Eligible Bank Asset;

17 (3) Upon the appointment of a liquidator in pursuance of subsection
18 (1) of this section, all powers of the Board of Trustees shall cease, except so far
19 as is necessary to consider and if thought fit approve the account for the
20 winding up prepared by the liquidator in pursuance of subsection (4) of this
21 section.

22 (4) As soon as the affairs of the Resolution Cost Fund are fully wound
23 up, the liquidator shall prepare an account of the winding up, showing how the
24 winding up has been conducted and lay same before the Board of Trustees.

25 (5) Subject to subsection (6) of this section, all moneys standing to the
26 credit of the Resolution Cost Fund over and above that required for the
27 purposes specified under section 65 of this Act, shall upon the dissolution and
28 winding up of the affairs of the Resolution Cost Fund be deemed to be held in
29 trust for the benefit of the Central Bank of Nigeria and the Eligible Financial
30 Institutions and shall be distributed by the liquidator amongst the Central Bank

1 of Nigeria and the Eligible Financial Institutions on a pro rata basis.

2 (6) All costs, charges and expenses properly incurred in the
3 winding up of the Resolution Cost Fund, including the remuneration of the
4 liquidator, shall be payable out of the moneys standing to the credit of the
5 Resolution Cost Fund and assets of the Resolution Cost Fund.

6 79. The Board of Trustees shall cause to be kept, for the Resolution
7 Cost Fund, proper books of accounts with respect to all annual banking
8 sector resolution cost levies and contributions made to the Resolution Cost
9 Fund, all the transactions and investments of the Resolution Cost Fund and
10 give a true and fair view of the state affairs of the Fund in such form and in
11 compliance with such accounting standards as may be prescribed by the
12 Central Bank of Nigeria.

Books of
Accounts

13 80. -(1) The Board of Trustees shall cause the accounts of the
14 Resolution Cost Fund to be submitted for audit within six weeks after the
15 end of each financial year to such independent firm of auditors as the Board
16 of Trustees may appoint. To qualify for such appointment, such independent
17 firm of auditors shall:

Audit of
Resolution Cost
Fund

18 (a) be a member of one of the professional bodies recognised in
19 Nigeria; and

20 (b) be resident in Nigeria and carry on in Nigeria, professional
21 practice as accountant and auditor.

22 (2) The Board of Trustees shall cause a copy of the accounts of the
23 Resolution Cost Fund as audited to be submitted to the, the Governor and
24 each Eligible Financial Institution, within twelve weeks after the end of the
25 financial year to which such account relates.

26 81. The Board of Trustees shall, not later than three months after
27 the end of each financial year, beginning with the financial year ending
28 2014, submit a report in such form and with such information as may be
29 specified by the Central Bank of Nigeria (in this Act referred to as an "annual
30 report") to the President, the Minister, the Governor, both Houses of the

Annual Report
of Resolution
Cost Fund

1 National Assembly and each Eligible Financial Institution, of its activities
2 during the financial year concerned. Provided that the audited accounts of the
3 Corporation for the relevant year; and failing that, the management accounts of
4 the Corporation, shall be included in the annual report.

Financial Year
of Resolution
Cost Fund

5 82. The financial year of the Resolution Cost Fund shall begin on the
6 1st day of January and end on the 31st day of December.

Offence in
Relation to
Resolution
Cost Fund

7 83. -(1) Without prejudice to the provisions of Section 54 of this Act,
8 any Eligible Financial Institution which fails to comply with any of the
9 provisions of this Part IX Act shall be guilty of an offence and shall on
10 conviction be liable to a fine of N1,000,000,000 (One Billion Naira) for each
11 incidence of non-compliance.

12 (2) Where an Eligible Financial Institution commits an offence under
13 subsection (1) of this section, every director and management staff of such
14 Eligible Financial Institution shall also be severally guilty of that offence and
15 liable to be prosecuted, convicted and punished for the offence in like manner
16 as if he had himself committed the offence, unless he proves that at the relevant
17 time, he demanded of the board of directors of the Eligible Financial
18 Institution, in writing that the Eligible Financial Institution complies with the
19 provisions of this Act and delivered a copy of such demand to the Board of
20 Trustees.

21 (3) Any person, who being a director or employee of an Eligible
22 Financial Institution, knowingly or recklessly makes a false claim or
23 representation in any material respect in relation to the ascertainment of the
24 amount of the banking sector resolution cost which an Eligible Financial
25 Institution is liable to pay in pursuance of this Act shall be guilty of an offence
26 under this Act and shall on conviction be liable to a fine of N10,000,000 (Ten
27 Million Naira) or imprisonment for a term of two years or to both such fine and
28 imprisonment.

29 (4) Subject to the provisions of subsection (3) of this section if the
30 annual levy to which an Eligible Financial Institution is liable in pursuance of

1 at least two newspapers with nationwide circulation.

2 (5) A receiver under this section approved to manage the affairs of a
3 debtor company or debtor entity, shall, forthwith upon the publication of the
4 notice referred to in subsection (4) above become entitled to take over the
5 management of the affairs of the debtor company or debtor entity in the
6 name, and on behalf of the debtor entity, for the benefit of the debtor
7 company or debtor entity, the general body of creditors of the debtor
8 company or debtor entity for the period specified in the said notice.

9 (6) A receiver managing the affairs of a debtor company or debtor
10 entity in pursuance of the provisions of this section shall be deemed to be a
11 fiduciary of the debtor company or debtor entity and all its creditors; and
12 shall not in paying-off any debts owed by the debtor-company or debtor
13 entity strictly adhere to debt priority ranking prescribed under Section 494
14 of the Companies and Allied Matters Act.

15 (7) Subject to subsection (9) of this section; forthwith upon the
16 publication of the notice referred to subsection (4) of this section, all
17 judgments, claims, debt enforcement procedures existing or being pursued
18 before the publication of the notice shall stand automatically suspended and
19 be unenforceable against the debtor company for the shorter of a period of
20 one year from the date of the publication of the notice or the period that the
21 receiver continues to manage the affairs of the debtor company. Provided
22 that claims relating to wages and other entitlements of existing staff of the
23 debtor company or debtor entity and professional advisers shall not be so
24 suspended.

25 (8) A receiver acting in pursuance of subsection (2)(c) of this
26 section shall within 30 days of the publication of the notice referred to in
27 subsection (4) of this section cause to be prepared a detailed and
28 comprehensive plan for the rehabilitation of the debtor-company or debtor
29 entity.

30 (9) Where a receiver acting in pursuance of subsection (2)(c) of

1 fails to comply with the provisions of subsection (8) of this section, the
2 provisions of subsection (7) of this section shall cease to apply.

Amendment of
Section 60

3 6. Section 60 of the Act is hereby amended by:

4 (a) the deletion of the existing head notes and replacing same with the
5 words "Exemptions Granted to the Corporation"; and

6 (b) inserting a new paragraph (c) as follows:

7 "(c) Investments and Securities Act".

Amendment of
Section 61

8 7. Section 61 of the Act is hereby amended by being renumbered as
9 Section 87, and by:

10 (a) inserting immediately following the definition of "eligible bank
11 assets" the following definition:

12 "eligible equity" means shares, stock or other interest in the equity or share
13 capital of an eligible financial institution;

14 (b) inserting immediately following the definition of "Minister" the
15 following definition:

16 "tenor" when used in Part IX of this Act means a period of 10 years from the
17 calendar year 2014 but may be extended by no more than a maximum of 5 years
18 by the Governor."

Amendment of
Section 62

19 8. Section 62 of the Act is hereby amended by being renumbered as
20 Section 88.

Insertion of New
Part IX
(Section 61-85)

21 9. The Act is hereby amended by the deletion of Section 46(2) and
22 insertion of a new Part IX immediately after section 60 as follows:

23 PART IX - BANKING SECTOR RESOLUTION COST FUND

Establishment
of Banking
Sector Resolution
Cost Fund

24 61.-(1) Without prejudice to the provisions of section 19 of this Act,
25 there is hereby established, for the purposes specified in section 65 of this Act, a
26 fund to be known as the Banking Sector Resolution Cost Fund (in this Act
27 referred to as "Resolution Cost Fund") which shall be domiciled with the
28 Central Bank of Nigeria, and into which shall be paid:

29 (a) all contributions and levies imposed under this Part IX;

30 and

1 (b) the sums vested in the Resolution Cost Fund by section 64 of
2 this Act.

3 (2) The Resolution Cost Fund shall be tax neutral and accordingly,
4 all monies accruing to, payments made from, and instruments and
5 transactions relating to, the Resolution Cost Fund shall be exempt from all
6 forms of taxes, levies, duties, charges or imposition however described.

7 62. -(1) On or before the first business day in each calendar year,
8 starting from the 2014 calendar year and up to the end of the tenor, the
9 Central Bank of Nigeria shall pay into the Resolution Cost Fund the sum of
10 N50,000,000,000 (Fifty Billion Naira) or such higher sum as the Board of
11 the Central Bank of Nigeria may, from time to time determine.

Contribution by
the Central Bank
of Nigeria

12 (2) For the purposes of making the payment required under
13 subsection (1), the Central Bank of Nigeria shall appropriate the said sum
14 N50,000,000,000 (Fifty Billion Naira) or such higher sum determined by
15 the Board of the Central Bank of Nigeria in pursuance of subsection (1) of
16 this section, from the general reserves or other funds of the Central Bank of
17 Nigeria, and cause the sum so appropriated to be paid into the Resolution
18 Cost Fund in immediately available funds.

19 63. -(1) There is hereby imposed on each Eligible Financial
20 Institution, an annual levy, in an amount equivalent to fifty (50) basis points
21 (or such higher basis points as may from time to time be determined by the
22 Central Bank of Nigeria) of its total assets as at the date of its audited
23 financial statements for the immediately preceding financial year published
24 pursuant to the Banks and other Financial Institutions Act, and which shall
25 be payable on or before the 30th day of April in each calendar year
26 commencing in the 2014 calendar year, and for every calendar year during
27 the tenor.

Levy on Eligible
Financial
Institutions

28 (2) For the avoidance of doubt, as it relates to the 2014 calendar
29 year, the reference to immediately preceding financial year in subsection (1)
30 of this section shall be deemed to mean the end of the 2013 calendar year.

1 Accordingly, Each Eligible Financial Institution shall be liable to pay the
2 annual levy imposed under subsection (1) of this section as it applies to its total
3 assets as at end of the 2013 calendar year. Provided that where an Eligible
4 Financial Institution has already made a contribution under the voluntary
5 contractual arrangements referred to in section 64 of this Act on its total assets
6 as at a date after 31 st April 2013, then the levy imposed under subsection (1) of
7 this section shall not apply as it relates to the total assets of such Eligible
8 Financial Institution as at the end the 2013 calendar year.

9 (3) Each Eligible Financial Institution shall not later than 10 business
10 days from the 31 st day of March of every calendar during the period referred to
11 in subsection(1) of this section:

12 (a) carry out a self-assessment of the amount it is liable to pay into the
13 Resolution Cost Fund for the relevant calendar year in pursuance of the levy
14 imposed under subsection (1) of this section using the assessment parameters
15 specified in subsection (1) of this section; and

16 (b) submit to the Board of Trustees, its detailed computations of its
17 self-assessment, together with any supporting documentation relating thereto.

18 (4) If an Eligible Financial Institution fails or otherwise neglects to
19 comply with the requirement of subsection (3) of this section, or where in the
20 opinion of the Board of Trustees, the self-assessment submitted by an Eligible
21 Financial Institution in pursuance of subsection (3) of this section is incorrect,
22 or otherwise understated, the Board of Trustees shall assess and determine the
23 amount to which the concerned Eligible Financial Institution is liable.
24 Provided that where a representative of an Eligible Financial Institution whose
25 liability is to be assessed and determined in pursuance of this subsection is a
26 member of the Board of Trustees, such representative shall not participate in, or
27 be otherwise involved in, any such assessment and determination by the Board
28 of Trustees.

29 (5) An assessment and determination made by the Board of Trustees
30 in pursuance of subsection (4) of this section shall, save for manifest error, be

1 this Act, or any part thereof is not paid within the time specified in this Act,
2 the Eligible Financial Institution that so fails to pay the annual levy or any
3 part thereof shall be liable, in addition to annual levy or any part thereof due,
4 an additional sum amounting to ten times the annual levy or part thereof so
5 unpaid for every month that annual levy or part thereof remains unpaid.
6 Provided always that the Board of Trustees may remit in whole or in part the
7 additional sum imposed by the provisions of this subsection (4) of this
8 section.

9 84. -(1) Without prejudice to sub-section (3) of this section:

10 (a) no suit shall lie or be instituted against the Resolution Cost
11 Fund, a member of the Board of Trustees or any person acting on behalf of
12 the Resolution Cost Fund for any act done in pursuance or execution of this
13 Act unless it is commenced within three months next after the act, neglect or
14 default complained of, or in the case of a continuing act, neglect or default,
15 within three months next after the ceasing thereof; and

16 (b) no suit shall be commenced against the Resolution Cost Fund, a
17 member of the Board of Trustees or any person acting on behalf of the
18 Resolution Cost Fund before the expiration of one month after written notice
19 of intention to commence the suit shall have been served upon the
20 Resolution Cost Fund by the intending plaintiff or his agent; and the notice
21 shall clearly and explicitly state the cause of action, the particulars of the
22 claim, the name and place of abode of the intending plaintiff and the relief
23 which he claims.

24 (2) In any action or suit relating to the Resolution Cost Fund no
25 injunction or order in the nature thereof shall be issued against the
26 Resolution Cost Fund or any asset of the Resolution Cost Fund; and no
27 execution or attachment or processes in the nature thereof shall be issued
28 against moneys standing to the credit of the Resolution Cost Fund but any
29 sums of money which may, by the judgment of a court, be awarded against
30 the Resolution Cost Fund, shall, subject to any directions given by the court

Limitation of
Action in Relation
to Resolution
Cost Fund

1 where notice of appeal has been given by the Resolution Cost Fund, be paid
2 from moneys standing to the credit of the Resolution Cost Fund.

3 (3) Neither the Resolution Cost Fund, nor the Board of Trustees, nor
4 any person engaged by the Resolution Cost Fund or the Board of Trustees in
5 connection with the performance of the functions of the Board of Trustees or
6 the business of the Resolution Cost Fund, shall be subject to any action, claim,
7 or demand by or liability to any person in respect of anything done or omitted to
8 be done in good faith in pursuance or in execution of, or in connection with the
9 execution or intended execution of any power or function conferred upon the
10 Board of Trustees.

11 (4) Every member of the Board of Trustees or agent for the time being
12 of the Resolution Cost Fund shall be indemnified out of the assets of the
13 Resolution Cost Fund against any liability incurred by him in defending any
14 civil proceedings, if such proceeding is brought against him in his capacity as
15 such member or agent. Provided that nothing in this sub-section shall be
16 construed as entitling a member of the Board of Trustees to be indemnified
17 against liability arising from the breach of the fiduciary or other duties imposed
18 by section 70(3) of this Act.

Rules and
Regulations in
respect of
Resolution Cost
Fund

19 85. Without prejudice to the powers of the Central Bank of Nigeria to
20 make regulations and to issue guidelines and Direction under this Act, the
21 Central bank of Nigeria shall have power to make rules and regulations for
22 giving effect to the provisions of this Part IX and without limitation, for
23 regulating the management and operations of the Fund, and the proceedings of
24 the Board of Trustees.

Amendment of
Schedule,
Section 3

25 14. The Act is hereby amended by the insertion of a new section 86 as
26 follows:

Other Inconsistent
Enactments or
Laws

27 86. If any other enactment or law is inconsistent with the Provisions
28 of this Act, the provisions of this Act shall Prevail.

29 15. Section 3 of the Schedule to the Act is hereby amended by
30 deleting the words "provided that the report of any such committee shall not be

1 **effective unless approved by the Board.**

EXPLANATORY MEMORANDUM

**This Bill seeks to amend sections, 2, 16(5), 34(1), 34(2), 35, 46(2), 48, 60, 61
and 62 of the Asset Management Corporation of Nigeria Act, 2013.**