

# Debt Recovery Strategies

An introductory guide



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# Loan Documentation Checklist

The loan documentation checklist should include the following:

- Offer Letters
- Collateral documents
- Personal guarantee
- Asset Security
- Syndicated Loans



## Due Diligence Before Recovery

- Ascertain the amount of debt owed.
- Ascertain person(s) liable.
- Is the debt due or has there been any occurrence that has made the debt due irrespective of agreed repayment timelines?
- Is there any admission of the debt?
- Is there likelihood that the debt may be disputed, are there reasonable grounds to dispute?
- Is there a collateral for the debt?
- What is the nature of the Collateral? Is it legal or equitable?
- Is collateral immediately enforceable?
- Are there any legacy issues?



## Review of Documents

- Offer and Acceptance of the loan.
- Documents evidencing draw down/utilization of the loan e.g. Statement of Accounts, Cheques etc.
- Documents evidencing Default
- Collateral Documents e.g mortgage/debentures, personal guarantees
- Correspondence acknowledging the debt.
- Demand Letters.

## Court Tools

- Simple Debt Action/Fast Track Procedure at the Lagos High Court
- Action for Recovery under the Undeclared List/ Summary Judgment
- Action for enforcement of Collateral e.g. Claim for Possession, Claim to enforce Debenture, Hypothecation Action etc.
- Insolvency: Bankruptcy and Winding Up
- Receivership
- Enforcement of Personal Guarantees Under the Bankruptcy Act
- Foreclosure of Mortgage Property
- Mareva Injunction

## Alternative Dispute Resolution Tools

- Negotiation
- Mediation
- Arbitration

- Law Enforcement Agencies - Lodgment of a Criminal Petition for Illegal Diversion of Funds, Obtaining by Fraud or Issuance of Dud Cheque.
- Note however that the use of the Law Enforcement agencies as a recovery strategy has worked in some cases but, there are risks for violation of Human Rights especially where debtor is detained or imprisoned.
- Adverse Publicity/Publications (Name and Shame) - can be utilized but is inherent with dangers/risks for defamation or slander; **MRS V FCMB**, and most cases on **AMCON Debtors List publication** few years.
- Threat of prosecution
- Disruption of operations
- Whatever tool is deployed, there is a standard expectation of adherence to legal requirements.



- ❖ Business Recovery Model: This will ensure a WIN-WIN outcome as opposed to Litigation model which is WIN-LOSE outcome. The CAMA 2020 has introduced Business Rescue provisions for companies in distress. ADR methods like Early Neutral Evaluation, Mediation, Expert Determination etc can also be applied in a hybrid manner to achieve quick resolution.
- ❖ Litigation-Mediation Model: Litigation to be applied to jumpstart the recovery process and bring the Debtor to the mediation/negotiation table. This has proved effective in our work.
- ❖ Litigation Model: This should be seen as the last resort in all cases. A 'scenario plan' for a typical recovery case will reveal that it could take as long as 5-10 years to conclude an intricate case that goes on Appeal.

We employ hybrid of possible options in Recovery revolving around the 3 Basic approaches enumerated above.

The Litigation Model has not proved to be very effective for quick recovery as we have to face several challenges, including waste of time and costs. It is always our last option.

We encourage entities to 'switch' from the Loan Recovery to the Business Recovery Model. We had more debts restructured and performing with the Business Recovery Model than we got with the Litigation Model.

We encourage the Business Recovery Model where practicable as an effective tool for debt recovery - This will ensure a WIN-WIN outcome as opposed to Litigation model which is WIN-LOSE outcome



# About OAL

OAL is undisputedly a leading Debt Recovery Law Firm in Nigeria.

We are a market leader in Debt Recovery and Insolvency Practice and we adopt diverse legal tools for the recovery of debts.

We have been successful in recovering huge debts for clients such as the Asset Management Corporation of Nigeria (AMCON) the body set up by the government to deal with toxic assets in the financial sector.

Generally, our largest portfolio of debt recovery cases has come from Nigerian banks in their bid to recover non-performing loans.



Email: - mails@oal.law  
Website: www.oal.law  
Telephone: 01- 2790915-6  
01- 2716938

## Contact Us