



CROSS BORDER

Debt Recovery

Introduction

Recovering debts across borders is a complex and often time-consuming process made even more challenging when creditors must navigate the provisions for the lawful recovery of debts.

With the rise of globalization, cross-border and local trade, the demand for financing has risen thus making debt recovery a growing concern for both local and foreign lenders.

While Nigeria offers vast investment opportunities, understanding the local legal framework is essential for creditors seeking to protect their interests and recover outstanding debts. This article explores how creditors can pursue debt recovery successfully.

A debt may also refer to an outstanding balance after part payment has been made. It does not cease to be a debt simply because a portion has been paid.³

Consequently, to qualify as a monetary debt, it must be characterized by:

1. A certain or liquidated sum of money involved
2. The said sum of money must be owed and the due date for payment has elapsed.
3. There must be an obligation to pay the debt arising from an agreement between the parties where one party owes the other.⁴

A successful debt recovery action therefore must be premised on the above mentioned characteristics.

What is a Debt?

Before initiating the process of debt recovery, it is essential to first determine whether a valid debt exists. Most times when people speak of a debt the mean money. However in law a debt is not limited to money, it could also include goods or services owed from one party to another¹.

For the purpose of this article, we will focus specifically on monetary debts. In financial dealings, "debt" represents a sum of money due by certain and express agreement. It is a specified sum of money owed to one person from another, including not only the obligation of the debtor to pay but the right of creditor to recover and enforce payment.²



Initiating Recovery of a Debt

Once a creditor establishes that a debt is owed either by an entity or individual, several procedural steps are available under Nigerian law to facilitate recovery. It is essential to note that where the debt arises from a contractual relationship, the creditor must first consider and adhere to any dispute resolution mechanisms or recovery processes agreed upon in the contract.

Below are the key legal steps typically involved:



1. Good faith negotiations:

Before initiating formal legal action, it is advisable to attempt resolution through direct engagement with the debtor. This approach preserves business relationships and may lead to a cost-effective outcome. Informal discussions or structured negotiations can help parties agree on repayment terms or alternative means of settlement.

Once these repayment terms have been negotiated and agreed upon it is advisable to have them in writing and signed by the debtor.

2. Engagement of Legal Counsel:

Where good faith negotiations fail the creditors are strongly encouraged to instruct Counsel to evaluate the claim and advise on the recovery of the debt. Such a Counsel's scope of work may include without limitation the enforceability of the claim, a review of relevant agreements, advise on jurisdictional issues, advise in limitation issues and ensure compliance with procedural rules governing debt recovery.

3. Issuance of a Demand Letter:

In Nigeria, before a party can commence an action in court for the recovery of debt, a demand for the payment of the debt must have been made. Where no demand is made, a cause of action does not arise and no action can be commenced in court.⁵ Therefore, the issuance of the demand letter sets the debt recovery action in motion. This letter, should detail the outstanding debt, the contractual basis for the claim, any interest accrued and a specified deadline for repayment. A well-drafted demand letter may even promote payment and save parties the hassle of litigation

4. Alternative Dispute Resolution:

Following the issuance of a demand letter and the underlying agreement contains a mediation or arbitration clause, the creditor must honor that clause before approaching the courts.

Mediation or arbitration can lead to faster and less adversarial outcomes. As such when negotiating agreements it is crucial for parties to consider, mediation, negotiation and or arbitration together with the attendant cost.

Litigation: Litigation is typically the last resort, pursued only after negotiations and alternative dispute resolution mechanisms have failed. The creditor, through the professional services of Counsel may initiate legal proceedings in a court of competent jurisdiction against the debtor. Parties are generally free to agree in their contract on the jurisdiction for resolving disputes. Where litigation becomes necessary, such proceedings must be instituted in the court specified by the parties.

In certain courts there are fast-track mechanisms available for the recovery of debt to reduce delays often associated with litigation. Thus the creditor may take advantage of procedural options such as the undefended list procedure or summary judgment procedure, provided the claim meets the legal requirements for those routes.

5. Enforcement of judgement:

Once a judgment is obtained whether from a court of competent jurisdiction, it may be enforced pursuant to the provisions of the Sheriffs and Civil Process Act 2004 . In the case of foreign judgments, enforcement may be pursued by adhering to the provisions of the Reciprocal Enforcement of Foreign Judgments Act, Cap R5, Laws of the Federation of Nigeria 2004, or common law principles, depending on the country where the judgment originated. Once the judgment has been duly registered and recognized in Nigeria, it can be enforced in the same manner as a judgment delivered by a Nigerian court. The following legal mechanisms are available for enforcement:

- **Writ of Fieri Facias (FiFa):** Allows for the seizure and sale of the judgment debtor's movable property to satisfy the judgment debt.
- **Garnishee Proceedings:** Enables the attachment of debts owed to the judgment debtor by third parties, typically banks.
- **Writ of Attachment and Sale:** Permits the seizure and sale of the judgment debtor's immovable property.
- **Judgment Summons:** Compels the judgment debtor to appear in court and may result in civil imprisonment for non-payment, where appropriate.
- **Committal Proceedings:** Used in cases involving the disobedience of court orders or contempt of court.

Some challenges in Debt Recovery and possible solutions

1. Debtor Insolvency:

Debtors may claim insolvency or have insufficient assets, making recovery of debts difficult or impossible. Creditors can navigate this challenge by negotiating structured repayment plans or partial settlements, particularly where the debtor has a steady income but cannot afford a lump-sum payment.

For uncooperative corporate debtors, a more assertive course of action may be to initiate winding-up proceedings on the grounds of insolvency provided the debt remains unpaid 21 days after a formal demand has been served.⁶

2. Risk of Asset Disposal by Debtor:

Debtors may quickly dispose of or transfer assets out of jurisdiction to frustrate enforcement. Counsel on behalf of creditors can thus apply for a Mareva injunction to prevent a debtor from disposing assets pending the outcome of the debt recovery suit.⁷ The services of a forensic accountant can also be engaged to trace hidden assets within and outside Nigeria.

3. Lack of Knowledge of Debt Recovery Procedures in Nigeria:

Creditors, especially foreigners, may be unaware of Nigeria’s procedural requirements and may inadvertently initiate claims after the statutory limitation period,⁸ fail to issue required pre-action notices, or resort to unlawful means, such as involving the police.⁹ It is therefore crucial for creditors to act promptly and engage experienced Counsel who can provide proper guidance on the appropriate legal steps, timelines, and compliant recovery mechanisms.

Conclusion

Successfully recovering debts in Nigeria requires a deep understanding of the legal landscape, strategic planning, and timely execution.

Engaging experienced Counsel early in the process can be the difference between loss and recovery.



Footnote

¹*Uzor v. Daewoo Nig. Ltd*(2019) 10 NWLR (Pt. 1680) 207 (P. 222, paras. C-D)

² *A.-G., Adamawa State v. A.-G., Fed.* (2014) 14 NWLR (Pt. 1428) 515 (P. 559, paras. E-F)

³ *Ibid*

⁴ *Ibid*; *N.B.N. Ltd. V. S.C.D.C. Co. Ltd.* (P. 154, paras. A-B) (1998) 5 NWLR (Pt. 548) 144

⁵ *Kolo v. F.B.N. Plc.*(2003) 3 NWLR (Pt. 806) 216.

⁶ *Section 572(a) Companies and Allied Matters Act, 2020*

⁷ *Haladu v. Access Bank* (2021) 13 NWLR (Pt. 1794) 434 (P. 457, paras. C-E)

⁸ *An action for recovery of debts must be instituted within six (6) years from the date the default occurred.*

⁹*EFCC v. Diamond Bank Plc* (2018) 8 NWLR (Pt. 1620) 61

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