

## A Comparative Analysis of the Asset Management Corporation of Nigeria and the US Troubled Asset Relief Programme

Chinenyeze J. Amaechi, Ozioma Mary Amaechi and Folashade Adeyemo\*

### Abstract

This article is a comparative analysis of the Asset Management Corporation of Nigeria (AMCON) with the Troubled Asset Relief Program (TARP), in the US. AMCON is an institution which was created to purchase non-performing loans of Nigerian banks due to their exposure to the oil and gas sector and the capital market. AMCON acquires these toxic loans of both distressed and sound banks, and then converts the loans to equities and sell them off. Banks that wish to sell their toxic loans to AMCON sustain losses since the average purchase price is 40% of the cost of the loan. Once AMCON purchases the toxic loans of banks, it issues seven-year Federal Government guarantee bonds to the banks. TARP on the other hand, was established under the Emergency Economic Stabilisation Act, 2008 to ameliorate the effects of the 2007 global financial crisis on the US economy. Its primary focus was on addressing the impact of the crisis on financial institutions as a result of their exposure to subprime mortgages. TARP later, it incorporated the automobile companies as their failure, at the time, would have had a more significant impact to the US economy. The Secretary of the Treasury is responsible for the purchase of troubled assets, the management and sell of the assets and the remittance of the revenue from the sale to the US Treasury. TARP is encompassing and has the Financial Stability Oversight Board, the Congress, the Congressional Oversight Panel, the Comptroller General of the US, Judicial Review and Special Inspector General to help the Secretary in the performance of his duties. These checks and balances are lacking in AMCON hence, the tendency of abuse of power is high under AMCON. While TARP has succeeded in stabilising the US economy, AMCON is still struggling to stabilise the Nigerian banking sector. On further examination of these two institutions, this paper finds that there are a number of factors which hinder the realisation of AMCON's objectives. Primarily, this paper finds that there are no favourable government policies to compliment AMCON. The absence of this, is challenging for the sustainability and regulation of the Nigerian banking system. This article concludes that similar to TARP, AMCON must be further developed and strengthened, and contain a more exhaustive system of checks and balances. In addition, it must incorporate more favourable government policies in order to be a success story.

## 1. Introduction

The Asset Management Corporation of Nigeria (AMCON) was established with the objective of recapitalising distressed Nigerian banks. In addition, the objective was to enhance them with recapitalisation to make them capable of contributing positively to Nigeria's economic development. To realise this objective, AMCON issues zero coupon bonds to troubled banks in exchange for their non-performing loans after which the banks sell the bonds in the capital market to recapitalise and get more liquidity.<sup>1</sup>

The global crisis, which also affected Nigeria, left banks in a less favourable position. Although the crisis originated from the capital markets, the banking industry was hurt the most. The crisis affected 8 systemically important banks,<sup>2</sup> and the apex bank, was required to intervene.<sup>13</sup>

As a regulatory response to the crisis, and with the objective of saving the Nigerian banking industry from complete collapse, the Central Bank of Nigeria (CBN) established AMCON. However, it is argued that the approach adopted by AMCON did not enhance the stability of Nigerian banks.<sup>4</sup> Although the creation of AMCON is to be commended, there are still uncertainties amongst investors, businesses and other financial users as to the true financial

---

\* Chinenyeze Amaechi, LLB, B.L, LLM (Manchester), PhD (Manchester); Lecturer, Faculty of Law, Imo State University, Nigeria, Ozioma Mary Ogbonna, LLB, B.L, LLM; Associate, Kingsley Oparaku & Co.; and Folashade Adeyemo, LLB, B.L, LLM (Brunel); Lecturer, Kingston University, London; and Doctoral Researcher, Brunel Law School.

<sup>1</sup> Adeshina Odedina, "The Impacts of AMCON on the Nigerian Capital Market", "CP=Africa (20 January 2011) 1, online <<http://www.cp-africa.com/2011/01/20/impacts-amcon-nigerian-capital-market/>>, accessed September 2 2016.

<sup>2</sup> Oceanic Bank International Nigeria Plc; Intercontinental Bank Plc; Equatorial Trust Bank Ltd; Union Bank of Nigeria Plc; Spring Bank Plc; Finbank Plc; Afribank Nigeria Plc; and Bank PHB Plc.

<sup>3</sup> Arinze Ngwube and Matthew Ogbuagu, "Global Financial Crisis and Nigeria Economy", *Global Journal of Management and Business Research: B Economics and Commerce*, Vol. 14, Iss. 10, 2014, 24-30, at 25. <sup>1</sup>

<sup>4</sup> Eromosele Abiodun, "Economic Crisis: How Nigeria Failed to Learn from History" *This Day* 4 May 2016 online: <[www.thisdaylive.com/index.php/2016/5/04/economic-crisis0how-nigeria-failed-to-lern-from-history/](http://www.thisdaylive.com/index.php/2016/5/04/economic-crisis0how-nigeria-failed-to-lern-from-history/)> accessed on September 2 2016.

health of Nigerian banks and how well capitalised they are.<sup>5</sup> In light of this, there is a need to provide a more thorough and comprehensive analysis vis-à-vis the extent of which AMCON has achieved the purpose.

Prior to the the establishment of AMCON in Nigeria, there was a similar policy in the US known as the Troubled Asset Relief Program (TARP). This article also examines TARP with two core objectives; the first, to identify the extent to which it achieved its objectives as an institution; and secondly, to make a comparative analysis against the back drop of Nigeria. The examination of TARP in the US, will demonstrate how some of these policies may be implemented into the Nigerian setting, and indeed into AMCON to make it more effective.

This article is structured into five sections. The introduction is the first. The subsequent section provides a critical analysis of AMCON. It discusses its establishment and core objectives. The third section provides a critically analysis of AMCON against TARP with the intention to determine significant features of TARP, which may be incorporated in AMCON to enhance the operation of the institution. The fourth section explores the factors that militate against the realisation of AMCON's objectives. The last section concludes the article and offers final remarks.

## **2. Analysis of the Assets Management Corporation of Nigeria**

AMCON was established by s.1 of the *AMCON Act*.<sup>6</sup> On implementation, the core objectives include “to ensure stability of the nation’s financial sector and stimulate national economic

---

<sup>5</sup> “Policy shift on troubled banks: FG considers nationalisation”, *Business Day Newspaper* 6 July 2011 1.

<sup>6</sup> Asset Management Corporation Act Act, 2010. (AMCON).

recovery”.<sup>7</sup> Section 1 (4)<sup>8</sup> grants independence to AMCON, in order to make it an independent institution and make it capable to discharge the objectives for which it was established. In this instance, the independence provided, has the intention of preventing AMCON from being overshadowed by unnecessary bureaucratic bottleneck and political interference that may slacken the pace it needs to enhance sanity and confidence in banks.

Thus, AMCON is a separate institution from both the CBN, which is Nigeria’s apex bank, and the Nigeria Deposit Insurance Corporation (NDIC). It is duly incorporated, and it can *sue* and be *sued* in its corporate name.<sup>9</sup> The legal personality accorded to AMCON is necessary to enable it to realise the objectives for which it is established and perform its functions as provided for under sections 4 and 5 of the AMCON *Act* respectively.<sup>10</sup>

AMCON’s enforcement powers are strengthened through the establishment of the board of Directors which is responsible for the realisation of its objectives and the performance of its functions.<sup>11</sup> Unlike the CBN board of directors where the CBN Governor is both the Chairman of the board and the Chief Executive of the CBN, the AMCON board of directors is headed by a part-time Chairman who is a nominee of the Federal Ministry of Finance in consultation with the Minister (of Finance).<sup>12</sup> A Managing Director who is also the Chief Executive of AMCON

---

<sup>7</sup> Daniel Idonor, “Jonathan signs AMCON Bill into Law”, *Vanguard Newspaper* (20 July 2010), 1.

<sup>8</sup> AMCON, Act.

<sup>9</sup> AMCON Act, s 1 (2).

<sup>10</sup> AMCON Act.

<sup>11</sup> AMCON Act s. 9 (1).

<sup>12</sup> Other members of the Board are the Managing Director of AMCON who is also the Chief Executive of AMCON, three Executive Directors nominated by the CBN in consultation with the Minister of Finance and five non-executive directors of which two are nominated by the Federal Ministry of Finance, two by the CBN and one by NDIC, s.10 (1) AMCON Act.

is responsible for the day-to-day management of AMCON.<sup>13</sup> The distinction between the Chief Executive of AMCON and the Chairman of the board is fundamental as it creates a clear division of duties between the Chief Executive and the duties of the Chairman of the board. Furthermore, this clear division of power reduces opportunistic tendencies since neither the Managing Director nor the Chairman of the board has overbearing powers to singlehandedly dictate what happens in AMCON.

In addition, the nomination of members to the AMCON board is a significant factor. The CBN, NDIC and the Federal Ministry of Finance have the opportunity to nominate members of AMCON board, and there is a requirement that such members have at least 10 years financial experience at senior management level.<sup>14</sup> This ensures that the board is comprised of members which have the expertise to enable AMCON to achieve confidence in the banking institutions themselves.

In achieving this goal, AMCON makes the purchase of non-performing loans from distressed banks bailed out by the CBN in 2009 (which stands for N2.2 trillion,) in exchange for government bonds.<sup>15</sup> AMCON not only acquires toxic loans from distressed banks, but, manages them and disposes acquired assets with profit.<sup>16</sup> To achieve this purpose, it is contended that “[t]he toxic assets will be converted into equities, backed by shares of listed companies at implied premium of approximately 60 percent based on the 60 days’ average of

---

<sup>13</sup> AMCON Act s.17 (1).

<sup>14</sup> AMCON Act, s.10 (2).

<sup>15</sup> Idris Ahmed, “AMCON gets Board today - World Bank says no credit crunch” *Daily Trust Newspaper* (30 August 2010) 1; Idris Ahmed and Abdul-Rahman Abubakar, “CBN inaugurates AMCON Board today” *Daily Trust* (4 November 2010) 1 and Blessing Anaro, “New Risk posed by record gap in WDAS, parallel markets tempts bankers”, *Business Day Newspaper*, (6 July 2011) 1.

<sup>16</sup> Odidison Omankhanlen, “AMCON: Giving financial system new lease of life” *Nigerian Tribune*, (26 July 2010) 1 at 2.

recent prices ending November 15, 2010.<sup>17</sup>

To clarify, in order for a bank to sell a loan to AMCON, it must be ready to sustain a huge loss, or losses as the case may be, since the average purchase price is 40% of the cost of the loan itself.<sup>18</sup> Another category of loans taken into consideration by AMCON is what the *AMCON Act*<sup>19</sup> calls “*tainted assets*” although, the measure of *how* these assets are valued is not stated.<sup>20</sup> It was argued that this drastic emergency intervention was necessary, in order to prevent distressed banks from contaminating the whole financial sector, as a result of interconnectedness, and enable them resume normal banking business. However, in order to support these arguments as presented, it is necessary to examine why the 2004 consolidation exercise failed to achieve bank stability in Nigeria, which led to the setting up of AMCON.

Prior to the creation of AMCON, the apex bank mandated banks to achieve a minimum capital base of N25 billion naira.<sup>21</sup> This recapitalisation programme was induced by a bank examination, carried out by the CBN and NDIC. The examination revealed that a number of banks were unhealthy, and that the failure to act, could leave the Nigerian banking system on the verge of collapse. Interestingly, it should be noted that it is not only distressed banks that

---

<sup>17</sup> “AMCON and Banks Toxic Assets” *Sun News Publishing* (22 November 2010) 2 at 2.

<sup>18</sup> John Nwokpoku, “AMCON: Stakeholders Bicker Over Lifespan, Performance”, *Vanguard Newspaper* (26 May 2014) online: <[www.vanguardngr.com/2014/04/amcon-stakeholders-bicker-lifespan-performance/](http://www.vanguardngr.com/2014/04/amcon-stakeholders-bicker-lifespan-performance/)> accessed on September 2 2016.

<sup>19</sup> AMCON Act, s.37.

<sup>20</sup> For the ease of understanding, “tainted assets” means “those assets acquired by bank officials as a result of deliberate mischief including insider loans given to bank officials and relatives, fraudulent loans etc”, Attah, Bougel, Mohammed, ‘The AMCON Act - Limits and Hurdles on Forfeited Asset Disposal’, (2011), 1-6, at 1, available at

<http://thewillnigeria.com/opinion/7294-THE-AMCON-ACT-LIMITS-AND-HURDLES-FORFEITED-ASSET-DISPOSAL.html>, accessed 25 May, 2011; AMCON ACT, s. 37 (2). It should also be noted that unlike other eligible bank assets, borrower or other obligor connected with tainted assets is not entitled to any forbearance, waiver or debt forgiveness by AMCON, s. 37 (1) (a) of AMCON Act.

<sup>21</sup> All banks were required to achieve a minimum capital base of N25 billion naira. (Equivalent of £ 64,292,815.444)

<http://www.xe.com/currencyconverter/convert/?Amount=25000000000&From=NGN&To=GBP>, accessed September 9 2016.

pose a threat to the economy. The realisation of this issue caused AMCON to take capitalised banks into consideration, along with its intention to achieve stability and restore confidence within the banking sector.<sup>22</sup>

With this in mind, it is argued that AMCON intends to take both non-performing and margin loans off the balance sheets of “rescued and cleared” banks and cap margin loan at 10% of total loan portfolio of every bank.<sup>23</sup> It is worth noting that AMCON buys both non-performing loans, margin loans and other eligible bank assets based on purchase agreements with banks and issues seven-year Federal Government guaranteed bonds to these banks.<sup>24</sup>

Nevertheless, to purchase eligible bank assets as provided for under section 25 (1) of the AMCON Act,<sup>25</sup> AMCON requires huge financial resources at its disposal and this raises the need to examine how AMCON sources for funds to fulfil its obligations.

The provisions of the AMCON Act provide for a “sinking fund or any other fund” as may be specified by the Federal Ministry of Finance and the CBN to enable AMCON to meet the obligations conferred on it by the AMCON Act.<sup>26</sup> Accordingly, the CBN and the twenty-four newly consolidated banks in Nigeria signed a memorandum of understanding, establishing a fund, the Banking Sector Resolution Cost Sinking Fund to provide AMCON with the

---

<sup>22</sup> “UBA sells N100bn Bad Loans to AMCON”, *Vanguard News Paper* (20 February 2012), online: < <http://www.vanguardngr.com/2012/02/uba-sells-n100bn-bad-loans-to-amcon/>>, accessed September 9 2016.

<sup>23</sup> Adesoji Solanke and Ahmed Razaq, “AMCON: Lifting the veil on troubled asset valuation” (2010), 1-4, at 1, online: <http://www.proshareng.com/reports/view.php?id=3023>: accessed September 2 2016.

<sup>24</sup> Ogunkunle Olubunmi, “The AMCON Act: Beyond the maths”, 1-4, at <http://www.scribd.com/doc/43743807/The-AMCON-Act-Beyond-the-Maths>>, accessed September 2 2016.

AMCON Act, s.26 (1), 27 and 32.

<sup>25</sup> AMCON Act.

<sup>26</sup> AMCON Act, s.46 (2).

necessary capital to perform its functions.<sup>27</sup> Under this fund, capitalised banks will contribute 0.3 per cent of the value of their individual balance sheets to AMCON's Sinking Fund while the CBN contributes N50 billion to AMCON annually for the next ten years.<sup>28</sup>

Since the existence, AMCON has acquired 13,774 non-performing loans worth N3.6 trillion from 22 commercial banks in Nigeria.<sup>29</sup> Thus, this paper opines that AMCON's activities are macroprudential in nature since its intention is to maintain stability in the *whole* banking sector and not just in individual banks. In addition, a situation where capitalised banks contribute to the capitalisation of distressed banks can be likened to the flat rate premium in deposit insurance and this will contribute immensely in achieving stability for the entirety of banks in Nigeria.<sup>30</sup>

AMCON appears to have achieved some positive results in the banking sector; since its implementation. For instance, it is argued that the banking sector would have potentially lost N2trillion if the CBN had not intervened in the sector.<sup>31</sup> It is also contended that the signing of a Transaction Implementation Agreement (TIA) by Access Bank, Intercontinental Bank, FinBank, Union Bank, Oceanic Bank, the nationalisation of Afribank, Bank PHB and Spring Bank to facilitate their recapitalisation, and the acquisition of Equitorial Trust Bank by Sterling

---

<sup>27</sup> Babajide Komolafe, "CBN, Banks sign MoU on fund to rescue distressed banks", *Vanguard Newspaper* (16 January 2011) 1 at 1.

<sup>28</sup> Currently, there is no date of expiration for AMCON. However, there is an assumption that institutions such as AMCON are in existence for a period of 10 years. See also, Agency Reporter, "Expert foresees litigation in administration of AMCON Act", *Punch Newspaper* (5 November 2010), 1 at 1; Calag Capital Limited, "At last AMCON", (2010), 1-5, at 1, available at <http://3ccalag.com/july2010.pdf>, accessed September 2 2016 & Omankhanlen, Odidison, at 2, supra note 14. The sinking fund's aim is to meet any shortfall in AMCON's fund, Komolafe, Babajide, at 1, *ibid*.

<sup>29</sup> Bashie Ibrahim Hassan, "AMCON, Debt Recovery and National Interest", *The Nation* (8 August 2016), online: <http://thenationalonlineng.net/amcon-debt-recovery-national-interest> accessed on September 2 2016.

<sup>30</sup> In flat rate premium, banks are made to contribute the same amount to an insurance fund irrespective of the risk they pose to the economy. With respect to AMCON, a situation where healthy banks contribute to the capitalisation of other banks can be said to be flat rate since ordinarily, they are not supposed to contribute anything.

<sup>31</sup> Ademola Alawiye, "Banking Sector: Analysts Assess Impact of CBN's Reforms" *Punch Newspaper*, (30 May 2011) 1 at 1.



Bank have completed the recapitalisation of Nigerian banks.<sup>32</sup>

Although the creation of AMCON as a response to the Nigerian crisis by the CBN is to be commended, the institution itself unfortunately falls short in many areas. These, collectively, are grounds to consider if AMCON has been in a position to carry out the responsibilities for which it was initially created for. One of the arguments that this paper puts forward include the fact that AMCON has no expiration date. The absence of a sunset period, this paper argues, is an encouragement for banks to continue to issue non performing loans and collate toxic assets. In the absence of a sunset period, there is a presumption on the part of the banks, that AMCON will take on these debts.

Secondly, although the AMCON Act does indeed make the institution independent, there is still the matter of it being subject to the CBN's remit. There is also the absence of a clear resolution system in the instance that a bank is identified as failing or has failed. The statutory provisions of BOFIA<sup>33</sup> mandate that there is a systemic process which should be followed in this instance. This process is not suggestive, but rather mandated by law. The law is trite on there being a one way of doing something.<sup>34</sup>

Furthermore, in supporting the creation of AMCON, the intention is to make the matter of 'bank runs' a discarded issue. With this borne in mind, on the 5<sup>th</sup> of August 2011, the licences of three banks had been withdrawn by the CBN for failing to recapitalise before the 30<sup>th</sup> of September 2011 deadline.<sup>35</sup> This is despite the fact that the CBN took over the management of

---

<sup>32</sup> The argument here is that the aforementioned distressed banks did not fail out rightly although they acquired a new identity. Idris Ahmed, "Rescued Banks - Surviving Regulators' Surgical Knife", *Daily Trust Newspaper* (15 August 2011) 1 at 1.

<sup>33</sup> Banks and Other Financial Institutions Act, 1991 (2004), s.33 – 35. (BOFIA)

<sup>34</sup> *Ibid.* See also; *Nwankwo v. Yar'Adua* (2010) 10 NWLR (Pt. 1209) 518 at 559 paras. A – B; 565 para. H; *Amaechi v. INEC* (2008) 5 NWLR (Pt. 1080) 227 at 437 – 438 paras.

<sup>35</sup> The three banks are Afribank, Spring Bank and Bank PHB and their assets and liabilities were taken over by bridge banks MainStreet Bank Limited, Enterprise Bank Limited and Keystone Bank limited respectively, Omankhanlen, Odidison, Subair, Gbola, and Ekeoba, Friday, "CBN Revokes 3 Banks' Licences: AfriBank, Bank

these banks since 2009.<sup>36</sup> The action taken by the CBN not only contradicts the position of AMCON's Management and therefore makes it unable to realise its objectives, but demonstrates that even within the law, there is the absence of clarity of the roles of AMCON and the CBN.<sup>37</sup>

This paper posits that the actions of AMCON, the CBN and the NDIC do in fact justify the fears of banks and other relevant stakeholders that AMCON itself is merely a smokescreen to nationalise Nigerian banks and transfer their ownerships to the few favoured individuals in the country.<sup>38</sup>

This position is based on the fact that the shareholders of the nationalised banks eventually end up losing all their investments in the banks.<sup>39</sup> To this end, it can thus be contended that AMCON created as a vehicle to misallocate resources in order to present politicians with the opportunity to exercise influence over the activities of the CBN, the NDIC and AMCON. AMCON's actions sends a faulty signal to investors and their scepticism about AMCON's intent on banks may further worsen the woes of the Nigerian economy.

### **3. The Comparison with the US Troubled Asset Relief Program (TARP).**

The global crisis of 2007 demonstrated that no industry, regardless of its economic status, is immune to failure. The cause of the crisis could be traced back to poor regulation of the banking sector that is based on market efficiency contrary to the proposition of John Keynes

---

PHB, Spring Bank affected, FG, Stakeholders react", *Nigerian Tribune* (6 August, 2011) 1 at 1.

<sup>36</sup> Chudi Offodile, "Sanusi's Financial Gerrymandering" 27 August, 2011, 1-3, at 2 available at <http://businessnews.com.ng/2011/08/27/sanusi%E2%80%99s-financial-gerrymandering-opinion/>, accessed September 2 2016.

<sup>37</sup> Proshare Nigeria Ltd, "Beyond the case to Nationalise - What about NSE Processes", (2011), available at [www.proshareng.com/news/Money%20Market/Beyond-the-Case-to-Nationalise-What-about-NSE-Processes-/14671](http://www.proshareng.com/news/Money%20Market/Beyond-the-Case-to-Nationalise-What-about-NSE-Processes-/14671), accessed September 2 2016

<sup>38</sup> Gabriel Omoh, "AMCON shareholders in banks, in whose interest?" *Vanguard Newspaper* (24 January 2011) 1 at 2.

<sup>39</sup> "Union Bank gets Court Order on Recapitalisation Plan" *The Sun Newspaper*, (5 September, 2011) 1 at 2.

and Hyman Minsky for tight financial regulation.<sup>40</sup> The financial sector believes that the economy can be regulated by the forces of demand and supply and as such there is no need to regulate its activities with strict laws. It can be contended that this belief is wrong as it has been shown that deregulation promotes opportunism and greed.<sup>41</sup>

As a result of the misconceived belief on efficiency of the market, a crisis that started in the US subprime market crippled the whole world as a result of interconnectedness<sup>42</sup> and the concept of TBTF.<sup>43</sup> Externalities from the crisis also led to a decline in housing and equity prices, thus worsening the plight of the common man.<sup>44</sup>

Accordingly, TARP was established in October 2008 under the Emergency Economic Stabilization Act, 2008 (EESA) to ameliorate the effects of the 2007 global financial crisis on the US.<sup>45</sup> The main purpose of TARP is “to restore the liquidity and stability of the financial system” by purchasing troubled assets from financial institutions.<sup>46</sup> It is worth noting that the EESA is modelled to provide succour to the most affected US citizens after the global financial crisis while at the same time put the US economy back on track for prosperity.<sup>47</sup>

While it is TARP’s mandate to focus on its citizens, it does not appear to correlate with AMCON’s focus. Although AMCON took over N300 billion non-performing loans of

---

<sup>40</sup> James Crotty, Structural causes of the global financial crisis: a critical assessment of the new financial architecture”, 33 (4), *Cambridge Journal of Economics*, (2009), 563-580, at 564.

<sup>41</sup> Mark A Covaleski, Mark W Dirsmith and Sajay Samuel, “Changes in the Institutional Environment and the Institutions of Governance: Extending the contributions of the Transaction Cost Economics within the Management Control Literature”, 28, *Journal of Accounting, Organizations and Society*, (2003), 417-441, at 431.

<sup>42</sup> Crotty, *supra* note 40 at 574.

<sup>43</sup> The concept of ‘Too Big Too Fail’ is based on institutions having such a heavy presence within a financial system, or any system as the case may be, that it becomes so systemically important. In the case of banking, the failure of this institution would be so damaging to the remainder of the system. See also, Gary Gorton, *Slapped by the Invisible Hand: The Panic of 2007* (Oxford University Press, 2010)

<sup>44</sup> Carmen M Reinhart and Kenneth S Rogoff, “The aftermath of financial crises” (2009), 1-13, at 4 & 6, online: <<http://www.nber.org/papers/w14656.pdf>>, accessed on September 4 2016.

<sup>45</sup> EESA, s.101.

<sup>46</sup> United State Department of Treasury, “Agency Financial Report”, (2009), 3-117, at 3, online: [http://www.treasury.gov/initiatives/financial-stability/briefing-room/reports/agency\\_reports/Documents/OFS%20AFR%2009.pdf](http://www.treasury.gov/initiatives/financial-stability/briefing-room/reports/agency_reports/Documents/OFS%20AFR%2009.pdf), accessed ob 06/06/2016.

<sup>47</sup> The parties include home owners, tax payers and workers, s.2 of the *EESA 2008*.

distressed airlines in Nigeria,<sup>48</sup> its main focus is banks.<sup>49</sup> Nevertheless, the disparity between the focus of these two legislations justifies the need for legislations to be modelled according to the specific needs and antecedents of every economy. Arguably, this will discount the need for a “one-size-fits-all” type of legislation that may end up doing more harm to some economies than good since it did not factor inherent in the country into consideration.

Consequently, to achieve the onerous task of stabilising the US economy, section 115 of the AMCON *Act*<sup>50</sup> provides for \$700 billion to enhance the implementation of TARP. The Secretary of the Treasury (the Secretary) gained access to \$250 billion immediately after the establishment of TARP while he could have access to an additional \$100 billion or \$350 billion upon Presidential transmission of a written report to the Congress or upon submission of a written certification to Congress by the President respectively, requesting for such authority to be given to the Secretary.<sup>51</sup>

The enforcement powers of the Secretary are wide, and this allows him to exercise any right over purchased troubled assets, manage and sell troubled assets and ensure that revenues from sale of troubled assets are transferred to the US Treasury.<sup>52</sup> Furthermore, section 113 (a)(2)(A) of *EESA* provides for the Secretary to hold assets to maturity and sell anytime he thinks such assets will maximise the interest of tax payers.

With regards to AMCON, the provision of funds to purchase toxic assets from banks is shared between the CBN and capitalised banks and not purely on tax payers as is obtainable under

---

<sup>48</sup> Onyedi Ojiabor and Sanni Onogu, “Distressed Airlines owe AMCON N135b, says Chike-Obi” *The Nation* (4 July 2012)

<sup>49</sup> AMCON, “Mission & Vision”, (2012) online <[http://amcon.com.ng/about\\_us/mission\\_vision.aspx](http://amcon.com.ng/about_us/mission_vision.aspx)>, accessed September 5 2016.

<sup>50</sup> EESA.

<sup>51</sup> EESA, s.115 (a).

<sup>52</sup> EESA, s.106.

TARP.<sup>53</sup> As discussed previously, in the case of AMCON, the sharing of funding responsibilities between the CBN and capitalised banks can be said to be macroprudential in nature since it compels capitalised banks to contribute to the soundness of distressed banks in order to achieve system wide stability. This method of funding ensures that banks act *prudently* since they know that they will contribute to their bailout if things go wrong.

Taking the above into consideration, mandating sound banks to bailout distressed banks encourages a further financial hazard.<sup>54</sup> Bank managers may, in a bid to satisfy this mandate, take excessive risks that may jeopardise the soundness of banks under their management due to the belief that the sound ones will not allow the weak ones to fail.

The implementation of the provisions of TARP is done through the Secretary, through the Office of Financial Stability established within the Office of Domestic Finance of the Department of the Treasury.<sup>55</sup> Unlike in AMCON where the CBN issues guidelines under which it operates,<sup>56</sup> the Secretary issues guidelines under which TARP operates.<sup>57</sup> This approach gives the Secretary a plethora of power, that it may be subject to abuse. This is particularly so, since the *EESA* also provides him with the power to establish TARP, appoint an interim Assistant Secretary for TARP<sup>58</sup> and other employees that maybe necessary to facilitate the objectives of TARP.<sup>59</sup> However, it is appropriate to examine the checks and balances put in

---

<sup>53</sup> John Nwokpoku, 'AMCON: Stakeholders Bicker Over Lifespan, Performance', Vanguard Newspaper, May 26, 2014, available at [www.vanguardngr.com/2014/04/amcon-stakeholders-bicker-lifespan-performance/](http://www.vanguardngr.com/2014/04/amcon-stakeholders-bicker-lifespan-performance/), accessed on September 2 2016.

<sup>54</sup> This is similar to the Joseph Sausi regime – lifeboat arrangement.

<sup>55</sup> The Office of Financial Stability is headed by an Assistant Secretary of the Treasury, s.101 (a) (3) (A) of the *EESA*.

<sup>56</sup> *AMCON Act*, s. 8

<sup>57</sup> *EESA*, s.101 (d)

<sup>58</sup> *EESA*, s.101 (a) (1) & (3) (A). However, the Secretary is given power under s.108 *EESA* to issue rules and guidelines to address any conflict of interest that may arise from the exercise of the provisions of *EESA*.

<sup>59</sup> *EESA*, s.101 (c)

place by the *EESA* to counterbalance the excessive powers given to the Secretary.

The Financial Stability Oversight Board (FSOB) was established to review and make recommendations to the Secretary on the exercise of his authority under the *EESA*.<sup>60</sup> Also, the FSOB ensures that the policies implemented by the Secretary are in the overall interest of US taxpayers and the economic interest of the US.<sup>61</sup> However, this article argues that although the FSOB may be able to counter the excesses of the Secretary, the fact that the Secretary is also a member of this board, may undermine the power the board has over him even though he is not the chairperson of the board. Nevertheless, the Secretary is required to write a report of the financial statements and other activities of TARP to Congress monthly and this gives the Congress the opportunity to monitor the activities of TARP and limit the excesses of the Secretary if need be.<sup>62</sup>

A Congressional Oversight Panel established under section 125 of the *EESA* is responsible for the review of the financial markets and regulatory system and submits reports on the activities of the Secretary and the effectiveness of TARP to the Secretary. Another oversight established by the *EESA* to limit the excesses of the Secretary is the requirement for the Comptroller General of the US to oversee the activities and performance of TARP and of any agent or representative of TARP.<sup>63</sup> In fact, the Comptroller General “conducts annual audits and makes reports to relevant Congressional committees and office of the Special Inspector General every

---

<sup>60</sup> *EESA*, s.104 (a)

<sup>61</sup> *EESA*, s.104 (e)

<sup>62</sup> *EESA*, s.105. Another instance where Congress oversees and monitors the activities of the Secretary is under s. 201 of *EESA* where the Secretary makes available information on his activities to congressional support agencies. It should be noted that *AMCON Act*, made provision for AMCON to report its activities to both the House of Representative and the Senate through the relevant Standing Committees even though it did not specifically mention a financial statement. Further, the Ministry of Finance or the CBN may require AMCON to report to it any matter at any time or format, *AMCON Act*, s. 22 (1)(2)

<sup>63</sup> *EESA*, s.116. It should be noted that under this section, the Secretary is mandated by *EESA* to provide the Comptroller General with the necessary space and facilities, and grant him access to any record that will enable him carryout his responsibilities under the Act.

60 days”.<sup>64</sup>

Arguably, annual auditing by the Comptroller General may give the Secretary the incentive to manage TARP’s finances appropriately. Furthermore, the provision for judicial review under section 119 (a)(1)<sup>65</sup> and the appointment of a Special Inspector General under section 121 to “conduct, supervise and coordinate audits and investigations of the purchase, management, and sale of assets by the Secretary of the Treasury”<sup>66</sup> may also go a long way to address the arbitrary tendencies of the Secretary. This article contends that the *EESA* through the provisions for judicial review and Special Inspector General ensures that TARP is more effective by removing it from the control of politicians.

In the case of AMCON, there is a requirement that it submits its annual report to the CBN and the Ministry of Finance and its quarterly report to the relevant standing committees of the Nigerian National Assembly. This requirement to submit quarterly report to the Nigerian National Assembly may, reduce the power of the CBN over AMCON.<sup>67</sup> However, the absence of a specific provision to address the matter of judicial review over AMCON’s activities, or the creation of an independent body to *monitor* the activities of the CBN may give the CBN or even the management of AMCON the incentive to abuse their powers.<sup>68</sup>

Another novel step taken by TARP to rescue the US economy from the effects of the 2007 crisis is the authority given to the Securities and Exchange Commission (SEC) to suspend

---

<sup>64</sup> Saptarshi Ghosh and Sajid Mohamed, “The Troubled Assets Relief Program (TARP) and its Limitations: An analysis”, 52 (2), *International Journal of Law and Management*, (2010), 124-143, at 129. See also s.116 (a)(3) of *EESA*.

<sup>65</sup> *EESA*.

<sup>66</sup> *EESA*, s.121 (a), (b)(1) & (c)

<sup>67</sup> *AMCON Act*, s.21 & 22 of

<sup>68</sup> It is argued that the CBN has immunity by virtue of s.53(1) *BOFIA* but, the courts have ruled that while there is respect for this provisions, this does not mean that the actions of the CBN cannot be subject to judicial review. See the cases of: *Savannah Bank of Nigeria v CBN & Ors* (2012) 1 BFLR; *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1. K.B.223.

mark-to-market accounting standard where it is held to be in the public interest to do so.<sup>69</sup> It should be noted that mark-to-market accounting standard under Basel II values assets based on current market price and this resulted to the reduction in the value of all mortgages and mortgage related securities when rate of default became higher, thus dragging the US economy into more crisis.<sup>70</sup> This method of accounting measures counterparty credit risk by concentrating only on terms of default and credit migration without considering the risk associated with deterioration of credit quality.<sup>71</sup>

This made the *EESA* consider it worthwhile to mandate the SEC, in consultation with the Federal Reserve and the Secretary, to undertake study of the impacts of mark-to-market on banks' balance sheet, financial information available to investors and the role it played in the 2007 crisis.<sup>72</sup> SEC concluded that “none of the firms that collapsed or nearly collapsed was done in by reporting poor accounting results in its financial statements”.<sup>73</sup> To clarify further, it was clear that, mark-to-market played little or no role in the 2007 crisis.<sup>74</sup> Having examined the provisions of the *EESA*, the next step is to make a critical analysis to the extent which TARP has impacted on the US economy.

The core concern after the implementation of TARP was that it is susceptible to fraud, and that

---

<sup>69</sup> *EESA*, s.132 (a). It should be noted that this is not provided for under AMCON.

<sup>70</sup> Gingrich Newt, “Suspend Mark-To-Market Now: The one regulatory action that will calm our markets”, *Forbes.com*, 29th September, 2008, 1-3, at 1.

<sup>71</sup> Hannoun Herve, 'The Basel III Capital Framework: a decisive breakthrough', (2010), 1-16, at 8, online <<http://www.bis.org/speeches/sp101125a.pdf>>, accessed September 9 2016.

<sup>72</sup> *EESA*, s.133

<sup>73</sup> John Patrick Hum, “One Cheer for Credit Rating Agencies: How the Mark-to-Market Accounting Debate highlights the Case for Rating-Dependent Capital Regulation”, 2009, 1-27, at 2, online <http://ssrn.com/abstract=1331633>, September 13 2016.

<sup>74</sup> Mark Jickling, “Causes of Financial Crisis”, 2009, 1-12, at 7, online: [http://digitalcommons.ilr.cornell.edu/key\\_workplace/600](http://digitalcommons.ilr.cornell.edu/key_workplace/600) accessed on September 13 2016.



this may cause US taxpayers billions of dollars.<sup>75</sup> It is also contended that US taxpayers will lose about \$66 billion from the bailout of financial institutions.<sup>76</sup> It is also said that TARP gave banks the incentive to pay more bonuses to their executives instead of punishing them for the role they played in the global financial crisis.<sup>77</sup>

In addition to this, it was argued that TARP bailed out automobile companies like General Motors and Chrysler through Automotive Industry Financing Program even though they did not qualify as financial institutions.<sup>78</sup> However, one of the reasons given for the bailout of automobile companies was that it prevents them from being taken over by foreign automakers as well as prevents increment in unemployment rate.<sup>79</sup> Also, TARP deviated from the purpose for which it was set up by purchasing non-voting preferred stock from banks and other financial institutions instead of buying toxic assets off their balance sheets.<sup>80</sup> The US Treasury is of the view that:

In order to achieve the objective of providing capital support, and meet bank regulatory requirements for Tier I capital, TARP could not require that a bank repay Treasury at a fixed date, as one would with a loan.<sup>81</sup>

---

<sup>75</sup> This concern is based on US experience from previous programs like hurricane-relief program and the 1990s savings and loan bailout, Michael Crittenden, “TARP said to be ripe for fraud”, *The Wall Street Journal*, February 25, 2009, 1-2, at 1.

<sup>76</sup> Daniel Wagner and Pallavi Gogoi “AIG deal might not repay all TARP money: US Treasury will swap the debt that it holds for common stock”, *Associated Press*, 30th September, 2010, 1-2, at 1. (AIG, 2010)

<sup>77</sup> *Ibid.*

<sup>78</sup> Here, it is said that Obama’s administration used TARP as a political tool to award more money to United Auto Workers, a trade union that is a close political ally of his administration, Hensarling, *Jeb*, supra note 72. & McCool, J. Thomas, at 8, supra note 73.

<sup>79</sup> Timothy Massad, “Citizens’ Report on the Troubled Asset Relief Program (TARP)”, (2010), 1 at 6, online: <[http://www.treasury.gov/initiatives/financial-stability/briefing-room/reports/agency\\_reports/Documents/OFS%20CR\\_2010\\_Feb11\\_last.pdf](http://www.treasury.gov/initiatives/financial-stability/briefing-room/reports/agency_reports/Documents/OFS%20CR_2010_Feb11_last.pdf)>, accessed 06/06/2011 and J Robert Samuelson, “Why TARP has been a success story”, (2011), 1 at 2 online: <[http://www.washingtonpost.com/opinions/why-tarp-has-been-a-success-story/2011/03/25/AFEe6jKB\\_story.html](http://www.washingtonpost.com/opinions/why-tarp-has-been-a-success-story/2011/03/25/AFEe6jKB_story.html)>, accessed 03/06/2011.

<sup>80</sup> Ghosh and Mohamed, supra note 64 at 130.

<sup>81</sup> Non-voting preferred stock means that the Treasury is not entitled to board seat, although it can elect two directors to the board if dividends are not paid for six quarters, United State Department of Treasury, “Troubled Asset Relief Program: Two Year Retrospective”, (2010), 1-93, at 25, online <[http://www.treasury.gov/initiatives/financial-stability/briefing-room/reports/agency\\_reports/Documents/TARP%20Two%20Year%20Retrospective\\_10%2005%2010\\_transmittal%20letter.pdf](http://www.treasury.gov/initiatives/financial-stability/briefing-room/reports/agency_reports/Documents/TARP%20Two%20Year%20Retrospective_10%2005%2010_transmittal%20letter.pdf)>, accessed 06/06/2011.

It is also contended that TARP gave loans to credit markets through Term Asset-Backed Securities Loan Facility (TALF) and the Public Private Investment Program (PPIP).<sup>82</sup>

The originating factor of the global crisis being the connection with subprime mortgages, poor regulation and the matter of interconnectedness, not only affected a significant portion of the US economy, but has had significant impacts on the position of regulation. This paper argues that, it would have been wrong to single out financial institutions for bailout without bailing out other institutions, because the interconnectedness itself with other systemically important institutions may have caused further problems as a result of illiquidity or even jeopardise the stability of the bailed out financial institutions.

Since the introduction of TARP, the US economy has continued to be a success. The figure below demonstrates the unemployment rate in the US from January 2006 to August 2016. The figure exemplifies that the unemployment rate started rising at the beginning of the crisis in 2007 and even rose up to 10% in 2009. However, as at August 2016, the unemployment rate in the USA is 4.9%, which conveys that it is gradually reducing to the position pre crisis.

**Figure: Labour Force Statistics of the USA from 2006 to 2016 in percentage<sup>83</sup>**

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	4.7	4.8	4.7	4.7	4.6	4.6	4.7	4.7	4.5	4.4	4.5	4.4
2007	4.6	4.5	4.4	4.5	4.4	4.6	4.7	4.6	4.7	4.7	4.7	5.0
2008	5.0	4.9	5.1	5.0	5.4	5.6	5.8	6.1	6.1	6.5	6.8	7.3
2009	7.8	8.3	8.7	9.0	9.4	9.5	9.5	9.6	9.8	10.0	9.9	9.9
2010	9.8	9.8	9.9	9.9	9.6	9.4	9.4	9.5	9.5	9.4	9.8	9.3
2011	9.1	9.0	9.0	9.1	9.0	9.1	9.0	9.0	9.0	8.8	8.6	8.5
2012	8.3	8.3	8.2	8.2	8.2	8.2	8.2	8.1	7.8	7.8	7.7	7.9
2013	8.0	7.7	7.5	7.6	7.5	7.5	7.3	7.3	7.3	7.2	6.9	6.7
2014	6.6	6.7	6.7	6.2	6.2	6.1	6.2	6.2	6.0	5.7	5.8	5.6
2015	5.7	5.5	5.5	5.4	5.5	5.3	5.3	5.1	5.1	5.0	5.0	5.0

<sup>82</sup> Here, the essence of TALF is “to restart asset-backed securitisation markets” while PPIP “matched TARP fund with private capital to purchase legacy mortgage-related securities”, United State Department of Treasury, *ibid*, at 11.

<sup>83</sup> US Bureau of Labour Statistics, “Labour Force Statistics from the Current Population Survey” (15 September 2016) online: <http://data.bls.gov/pdq/SurveyOutputServlet> accessed 15/09/2016, by 5:29AM.

2016 4.9 4.9 5.0 5.0 4.7 4.9 4.9 4.9

A further analysis of the inflation rate of the US illustrates that it rose from 2.5% in 2006 to 4.1% in 2007 but reduced to 0.1% in 2008. Thus, in this paper's opinion, is to be attributed to the restoration of confidence in the US economy following the introduction of TARP.<sup>84</sup> Apart from 2009 and 2011 that had inflation rates of 2.7% and 3.0% respectively, the annual inflation rate in the US has been below 2%.<sup>85</sup> It is argued that the US government made a profit of \$15.3 billion from the bailout of banks and the US auto industry.<sup>86</sup> In fact, the large banks in the US paid \$110 billion fines to the US government for the roles they played in the 2007 financial crisis,<sup>87</sup> while Deutsche Bank is yet to pay its own \$14 billion fine.<sup>88</sup>

Thus, from the analysis above, it would be a correct argument that TARP impacted positively on the US economy. In the Nigerian context, AMCON's concentration of purchasing toxic assets from banks does not positively impact on the Nigerian financial system as a whole, and more particularly, it does not allow it to achieve its core objective. To this end, the goal of prudent banking regulation and the promotion of financial stability for the CBN<sup>90</sup> as the apex regulator becomes a challenging task.

Also, TARP improved risk spread in the financial sector and enabled banks to increase lending to US consumers and businesses.<sup>91</sup> TARP improved confidence in the US financial sector

---

<sup>84</sup> Coinnews Media Group LLC, "Current US Inflation Rate: 2006- 2016", 2016 online: <<http://www.usinflationcalculator.com/inflation/current-inflation-rates/>> accessed on 16/09/2016 by 2:49AM.

<sup>85</sup> *Ibid.*

<sup>86</sup> Chris Isidore, "U.S. ends TARP with \$15.3 billion Profit" CNNMoney December 19, 2014 online: <http://money.cnn.com/2014/12/19/news/companies/government-bailouts-end/>, accessed on 17/09/2016 by 4:01AM.

<sup>87</sup> Christina Rexrode and Emily Glazer, "Big Banks paid \$110 Billion in Mortgage Related Fines. Where did the Money go?", March 9 2016 The Wall Street Journal, online: [http://www.wsj.com/articles.big-banks-paid-110-billion-in-mortgages-related-fines-where-did-the-money-go-1457557442](http://www.wsj.com/articles/big-banks-paid-110-billion-in-mortgages-related-fines-where-did-the-money-go-1457557442)> accessed on 17/09/2016 by 4:15AM.

<sup>88</sup> "Deutsche Bank to Fight Department of Justice's \$14bn Fine", *The Guardian* (16 September 2016) online: <<https://www.theguardian.com/business/2016/sep/deutsche-bank-must-pay-14bn-fine-to-settle-use-mortgage-case>> accessed on 17/09/2016 by 4:40AM.

<sup>90</sup> Central Bank of Nigeria Act 2007, s 1(3).

<sup>91</sup> Jonathan Epstein, "TARP helped three area banks thrive", *The Buffalo News* (26 March 2011) 1-6, at 2;

through the Capital Purchase Program – a program through which the Treasury invested capital “in over 700 banks and thrifts deemed viable by their regulators, including over 400 small community banks”.<sup>92</sup>

It is further contended that TARP was able to stabilise the US economy “using only \$410 billion of its authorised \$700 billion”.<sup>93</sup> The US’s bailout of automobile companies saved more than one million American jobs and added more than one hundred and fifteen thousand more jobs to the existing jobs.<sup>94</sup> These analysis show that TARP succeeded in its mission and it is worth noting that its authority to make new financial commitments ended on the 3<sup>rd</sup> of October, 2010.

The examination of both institutions demonstrate that to an extent, TARP is more encompassing than AMCON and as such AMCON may have to incorporate some of the novel provisions of the *EESA* in order to be more effective to achieve bank stability and improve confidence in Nigerian banks. To support this position of this paper, the subsequent sections examine other factors that militate against the realisation of the object of AMCON.

#### **4. Factors that hinder effective realisation of AMCON’s objectives.**

The CBN contributes immensely to the appointment of AMCON board<sup>96</sup> and in consultation with the Federal Ministry of Finance, it is also responsible for issuing guidelines under which AMCON operates.<sup>97</sup> From the analysis of the powers of the CBN governor, it has been conveyed that the scope of the CBN’s powers is without limit.<sup>98</sup> This itself is a cause for public policy concerns, but this paper does not dwell into this aspect. Arguably, this has been further

---

McCool, J. Thomas, at 3.

<sup>92</sup> *Massad supra* note 79.

<sup>93</sup> *Samuelson supra* note 79.

<sup>96</sup> AMCON Act, s.9

<sup>97</sup> AMCON Act, s.8

<sup>98</sup> Chinenyeze Amaechi, “Regulatory Proposal to Address Financial Crisis in Nigeria”, 2015, Vol.5, *Journal of Commercial and Contemporary Law*, 138-152, at 142-146.

demonstrated with the management and operation of AMCON. This can be seen vis-à-vis AMCON's takeover and management of the nationalised banks despite the fact that this is the prerogative of the NDIC.<sup>99</sup> This latter act further demonstrates that Nigeria does not have a clear and concise banking resolution system in place. The stages of the nationalisation of the three rescued banks have been summed up in the following words:

The NDIC set up bridge banks on Friday, 5<sup>th</sup> August, 2011, and sold them to AMCOM on Saturday, 6<sup>th</sup> August, 2011. (On 7<sup>th</sup> August, 2011), AMCON announced new management teams and even released the new bank logos.<sup>100</sup>

Thus, it is contended that the action of the NDIC and AMCON in the nationalisation of the rescued banks is *ultra vires* the powers of AMCON and the NDIC as it goes beyond the objectives and functions of AMCON.<sup>101</sup>

Furthermore, the controversy surrounding the withdrawal of the licences of Afribank, Spring Bank and Bank PHB and the transfer of their assets and liabilities to the following bridge banks; Mainstreet Bank Limited, Enterprise Bank Limited and Keystone Bank Limited respectively have caused confusion on what the intent of AMCON actually is.<sup>102</sup> The licences of these three banks were withdrawn by the CBN, the NDIC and the AMCON without following the due process of the law.<sup>103</sup>

Also, in response to the actions of the CBN Governor in the banking sector, it was commented that the Governor is “stampeding (rescued banks) into taking hasty actions so that cronies of government, political patrons will buy them at peanuts”.<sup>104</sup> All these may point to the view that

---

<sup>99</sup> Nigerian Deposit Insurance Act, 2006, s.38 and s.39.

<sup>100</sup> Eghes Eyieyien, “CBN, Failed Bank Resolution, and Corporate Governance”, Daily Independent Newspaper, (23 August 2011), 1 at 2.

<sup>101</sup> AMCON Act, s.4 and s.5

<sup>102</sup> *Omankhanlen, Subair and Ekeoba, supra* note 35.

<sup>103</sup> AMCON Act, s. 4 and s.5

<sup>104</sup> Gabriel Omoh, “Sanusi will ruin Economy if allowed to carry out Liquidation of Eight Rescued Banks”, *Vanguard Newspaper*, (27 June 2011) 1 at 1.

the CBN Governor, the NDIC and AMCON are merely acting the script written by corrupt politicians.

Government policies may affect the stability of banks and in turn, undermine AMCON's objective of recapitalising banks. The foreign exchange restriction placed on some items by the CBN led to the closure of two hundred and seventy-two firms and fifty of these firms are manufacturing companies.<sup>105</sup> The Treasury Single Account (TSA) initiated by President Jonathan Administration's but executed by President Buhari administration's mandates banks to remit deposits from all ministries, departments and agencies to the Consolidation Revenue Fund Account with the CBN.<sup>106</sup> In furtherance of the TSA policy, the CBN barred nine banks from all foreign exchange transactions for failing to remit \$2.33 billion belonging to the Nigerian National Petroleum Corporation (NNPC) to the TSA.<sup>107</sup> As at August 2016, the inflation rate of Nigeria was 17.20%,<sup>108</sup> which means that Nigeria is experiencing a hyper inflation.

This article argues that these government policies may cause confusion in the economy and mop up the little fund available to banks. The fact that these policies are initiated when the Nigerian economy is unstable may make banks to stop giving loans to the few SMEs still in existence due to insufficient fund and thus, drag the economy into more crises. To reiterate further, while AMCON is mopping up non-performing loans of banks and trying to recapitalise

---

<sup>105</sup>“272 Firms Shut Down in One Year Under President Buhari” *Tory News* (25 August 2016) online: <https://www.tori.ng/news/38619/272-firms-shut-down-in-one-year-under-presentent-bu.html>>accessed September 9 2016.

<sup>106</sup> Isaac Anumihe, “How Treasury Single Account (TSA) may effect Economy”, September 9, 2016, online:< <http://www.newsheadines.com.ng/latest-sun-newspapers/2015/09/09/how-treasury-single-account-tsa-may-effec-t-economy/>>, accessed September 9 2016.

<sup>107</sup> “No Nonsense CBN Bars Nine Banks from all Forex Transactions for not Returning \$2.334bn NNPC Fund” *This Day Newspaper* (29 August online: <http://www.thisdaylive.com/index.php/2016/08/23/no-nonsense-cbn-bars-eight-banks-from-all-forex-transaction-s-for-concealing-2-125bn-nnpc-fund>> accessed on September 9 2016.

<sup>108</sup> Trading Economics, “Nigeria Core Inflation Rate”, 2016, available online: <http://www.tradingeconomics.com/nigeria/core-inflation-rate>> accessed on September 9 2016.

banks, there are no favourable government policies to enhance the realisation of AMCON's objectives. In fact, what the government policies are doing from the analysis above is to increase non-performing loans of banks and undercapitalise banks. Little wonder banks in Nigeria have resorted to laying-off of workers in order to remain a going concern.<sup>109</sup>

## **5. Conclusion.**

This article compared AMCON with TARP. It has been established that AMCON was created as a response to Nigeria's financial crisis in 2008, and was established to absorb non-performing loans of Nigerian banks due to their exposure to the oil and gas sector and the capital market. It is also established that TARP was created in the US as an aftermath of the 2007 global financial crisis.

AMCON is a separate legal person and as such, it can sue and be sued in its corporate name. AMCON acquires toxic loans of both distressed and sound banks. The toxic assets are then converted to equities and sold off. Banks that sell their loans to AMCON must be ready to sustain heavy loss since the average purchase price is 40% of the cost of the loan. Once AMCON purchases non-performing loans, margin loans and other eligible assets of banks, it issues seven-year Federal Government guaranteed bonds to the banks.

TARP, established under the *EESA*, was created to ameliorate the effects of the 2007 global financial crisis on the US economy. Its initial focus was on financial institutions due to their exposure to subprime mortgage but it later incorporated automobile companies since their failure would cause more havoc to the economy. The Secretary of the Treasury is responsible for the purchase of troubled assets, management of the assets and their sale. The Secretary also

---

<sup>109</sup> The Nation, "NLC Set to Shut Six Banks for Sacking Workers", 16 June, 2016, online: <http://www.google.com/ng/amp/thenatioonline.net/nlc-set-shut-six-banks-sacking-workers/amp> accessed on September 9 2016.

ensures that the revenue from the sale is transferred to the US Treasury. TARP has provision for the FSOB, the Congress, Congressional Oversight Panel, Comptroller General of the USA, Judicial Review and the Special Inspector General to assist the Secretary in the performance of its duties. These checks and balances are absent in AMCON. Instead, AMCON submits its annual report to the CBN and the Ministry of Finance, while its quarterly report goes to the relevant standing committee of the National Assembly. As such, there are instances where an AMCON executive abused its power in connivance with the CBN and the NDIC.

This paper has highlighted the significant differences between both institutions, primarily in the case of Nigeria, the absence of a solid checks and balance system. Thus, in the opinion of this article is the contributing factor which demonstrates the success rates of both institutions in both economies.

While TARP has succeeded in stabilising the US economy, AMCON is still struggling to bring stability within the Nigerian banking system. An analysis of other factors that hinder the realisation of AMCON's objectives shows that there are no favourable government policies to complement AMCON. To move the Nigerian banking system forward, there is a need for AMCON to be more encompassing like TARP, canvass exhaustive checks and balances to prevent abuse of power and subsequent lack of confidence in its activities



