

DEBT



Recovery of Debt in Nigeria



Debt is a sum of money that is owed or due to be paid pursuant to an express agreement, it is a specified sum of money that one person (debtor) is obligated to pay and the other person (creditor) has the legal right to collect or receive. The most common forms of debt are default in, or unpaid, loan repayments (mortgages, auto loans, personal loans and credit card debts) and unpaid contract sums.

For the recovery of debt in Nigeria, cognizance must be taken of the limitation period for instituting legal action for debt recovery. Premised on the Limitation Act and Limitation Law of Lagos State, legal action for recovery of debt (action founded on a simple contract) must be instituted within 6 years of the cause of action (Section 8 (1) (a) of the Limitation Law of Lagos State). However, for debt secured by mortgage or other charge, legal action thereon must be commenced no later than 12 years from the date on which the cause of action accrued (Section 12 of the Limitation Law of Lagos State). In this regard, any claim for debt recovery brought after the expiration of the prescribed limitation period will be statute barred, it will not be accepted or entertained. The creditor must also ensure that all pre-action steps required by the relevant court rules are adhered to.

Instituting legal proceedings for recovery of debt is usually the last resort for a recalcitrant debtor. There are indeed other mechanisms for recovery of debt that may be effective in the circumstances. Below are some of the steps to take to recover debt in Nigeria.

1. Decipher the debt recovery procedure agreed to by the Parties:

When entering into agreements or contracts with people or companies, it is important to draft such agreements in written form; signed and agreed by all parties, with all parties possessing a copy. The contract will typically contain details such as how debts will be recovered and actions to be taken in the event of a breach by either party. The terms of a contract must be adhered to, thus the contract is the first starting point to uncover the mechanism for debt recovery, if so provided.

2. Write a letter of demand:

This involves drafting and sending a demand letter to the debtor(s) and stating the possible consequences for failure to make payments within a given time frame. The letter should also include the various steps that will be taken in the event of a failure to pay the debt. The Practice Direction of the High Court of Lagos State on Pre-Action Protocol (Expeditious Disposal of Civil Cases) requires that a Letter of Claim with specific details stated therein and attached thereto must be sent to the debtor, amongst other requirements, prior to instituting legal action. The rules of the applicable court must be strictly adhered to so that the case once instituted in court is not dismissed based on a technicality.

3. Send a letter of reminder:

In the event that the debtor refuses to pay the debt owed after the effluxion of time stated in the letter of demand, a letter reminding the debtor of its failed obligation and outstanding indebtedness should be sent. This serves as a requisite reminder on the debt owed and affords the debtor the opportunity to liquidate the debt before an escalation to litigation.

4. Alternative Dispute Resolution (ADR) Mechanisms:

As the name implies, ADR denotes a wide range of procedures and processes for resolving disputes without litigation or court intervention. The common forms of ADR include negotiation, arbitration and mediation. While arbitration and mediation involve third-party intervention, parties may enter into negotiation by themselves. Parties must have agreed to the use of mediation or arbitration either in the underlying contract (mediation or arbitration clause) or in a separate agreement. Arbitration culminates in an enforceable award while mediation results in a settlement agreement based on the cooperation of parties. Cases instituted in court may also be referred to mediation based on the court's direction.

5. Institute a legal action:

Litigation should be considered as the last resort in the event where other methods seem to fail. Litigation entails the commencement of legal proceedings, use of the court system and legal representation (lawyers) for the recovery of the debt owed. Details such as the sum involved, nature of transaction and parties involved will determine the court to be approached. The best mechanism for debt recovery through the courts will largely be dependent on the circumstances of the case. The diverse options available to creditors include instituting an action for: summary judgment, insolvency: bankruptcy and winding up, receivership, foreclosure of mortgage property, mareva injunction, recovery of the indebtedness of a deceased debtor, criminal petition for illegal diversion of funds, obtaining by fraud and issuance of dud cheques.

Conclusion

It is important to review the underlying agreement between the parties to decipher the best mechanism and procedure for debt recovery. In the event that parties have agreed to ADR, then this must be honoured and explored. There is a plethora of legal redress available to creditors and the most suitable procedure will be determined by the unique circumstances of the case. Lawyers serve as a useful guide throughout this process.