

Executive Summary Of New Pension Reform Act, 2004

Introduction

The new Pension Reform Act 2004 has generated excitement in the Nigerian business community. Most of the expert views I have read have not been very satisfactory or detailed. I have attempted in this Newsletter to give to you both an executive summary and a detailed analysis (**see attachment to this mail for detailed analysis**) of the Pension Reform Act 2004. I urge you to make the time to study both this executive summary and the detailed analysis attached, and as always I welcome your thoughts and comments.

I acknowledge the invaluable time and suggestions of Mr. Nsa Harrison, retired Managing Partner of Pricewaterhousecoopers Nigeria , to this Newsletter. I thank him for accepting to be the first member of the Editorial Board to my Newsletters. I accept responsibility for all errors, if any, in this and subsequent publications.

Reactions To Last Newsletter

Conflict in human activity is destined. The new Rules of Court are only meant to assist in the quick resolution of disputes. However, the effectiveness of the Rules cannot be guaranteed because of the imperfections in human application.

An early consultation with a legal expert, at the very first opportunity is fundamental to a business surviving all manner of litigation and dispute(s). For example, any client that signs bulky complicated contracts without seeking legal advice, which in many cases is literally next-door, must hold itself/himself accountable for the outcome.

With respect to my Clients, I always advise that they should not respond directly to correspondence received from a legal consultant. This is because such correspondence, though written in simple language, usually have a motive and strategy that may not be in the client's economic interest.

Of equal mention and for emphasis, is the fact that litigation will continue to be difficult and expensive in spite of improvements in the Rules of Court.

The problems with the old rules of Court were principally the apparently unconscious refusal of relevant stakeholders, i.e. Judges, Legal Practitioners, litigants, other Court officials, etc., to be

dedicated to its enforcement. The new Rules pose greater demands on the stakeholders who may not necessarily change in their behaviour and mental disposition to dispute resolution.

Therefore, I recommend again prevention of disputes through seeking early legal advice; this is akin to seeing a medical doctor for regular medical check-up. In this regard, I recommend the following good sense business behaviour:

- Never be too busy to respond to a business correspondence or electronic mail after carefully reading it and thinking about it. (It is also courteous to respond to mails). This is because silence can sometime in Law, amount to an admission of liability.
- Do not negotiate with a Solicitor without your Solicitor being present. As the saying goes, a bad Solicitor is much better than no Solicitor at all.

Executive Summary The Pension Reform Act, 2004

The collection of retirement benefits in Nigeria have continued to cause a lot of suffering to retirees (and their respective next-of-kin) especially the retirees in the public sector of the economy. There are reports of many beneficiaries who died in retirement benefit queues after waiting for days, without food or water, to collect their benefits. To remedy some of these problems, the Nigerian government recently passed into law the Pension Reform Act, 2004 (?the Pension Act?).

Highlights Of The Pension Act

- For the provisions of the Pension Act to apply to employees in the private sector, the employer must have 5 or more employees in its employment.
- Every employee to the retirement scheme must have opened for him/her, by the Pension Fund Administrator chosen by the employee, a retirement savings account with a personal identification number (PIN).
- Benefits/payments under the Pension Act are not taxable provided that voluntarily contributions are not withdrawn before the end of 5 years from the date the voluntary contributions are made.
- Contributions by employers and employees are tax-deductible expenses when computing either Companies Income Tax or Personal Income Tax .
- The initial rates, in percentages, of total contributions by employers and employees, to the contributory scheme are as follows: -

(a) Private and public sectors:

- (i) Employer ? minimum of seven and a half percent
- (ii) Employee ? minimum of seven and a half percent

(b) Military:

- (i) Employer ? minimum of twelve and a half percent
- (ii) Employee ? minimum of two and a half percent

A magnanimous employer is allowed by the Pension Act to bear the full contribution stated above provided it is not less than the 15% of the employee's total monthly emoluments.

- The Pension Act has imputed on external Auditors, appointed by either the PFAs or the PFCs, a reporting obligation directly to the Pension Commission. Cases of suspected fraud or misappropriation of pension funds and assets are examples.
- PFAs and PFCs are required by this Law to report to the Pension Commission all members of its staff whose employment were terminated or dismissed on grounds of fraud or misappropriation of funds. A data bank is to be maintained and information in it circulated to all PFAs and PFCs.
- The Pension Act requires that all disputes arising from pension matters must be referred to the three stages of Alternative Dispute Resolution mechanism stated in this Act and these are reporting to the PFA, the Pension Commission and an Arbitration Panel or the Securities and Investment Tribunal. The Federal High Court has exclusive jurisdiction and enforces all judgements.

Retirement Account, Closed Pension Fund & Transitional Provisions

An employee is required by the Pension Act to maintain a ?Retirement savings Account? in his name with a Pension Fund Administrator (PFA) of his choice. This Law also allows the employee to transfer his retirement savings account from one PFA to another PFA provided the change is not done more than once in a year.

An employer that already operates a pension scheme, with assets in excess of N 500Million and such a scheme is regularly funded, for its employees is required to apply for a licence to continue to operate such a scheme as a Closed Pension Fund Administrator. It must submit to an actuarial valuation every financial year.

National Pension Commission

A National Pension Commission (the Pension Commission) is established as the Regulator for pension matters. It is a body corporate with perpetual succession and may be sued or sue in its own corporate name.

National Social Insurance Trust Fund

The National Social Insurance Trust Fund is a social insurance scheme for employees in the private sector of the economy alone. The rate of contribution to the scheme was 6.5% for employers and 3.5% for employees.

The failure of the National Social Insurance Trust Fund (NSITF) and the public sector pension schemes to effectively administer a social insurance and pension system in Nigeria metamorphosed into a crisis from which the Pension Act is founded.

The Pension Act has however not jettisoned the NSITF. In its stead, it requires the NSITF to establish an independent company to undertake the business of a PFA on its behalf. In the same vein, the PFA of NSITF must also appoint a PFC, as required by the Pension Act, to hold in trust NSITF funds and assets. Lastly, NSITF is required to establish a social insurance services scheme for the citizenry.

Pension Fund Administrators and Custodians

On the coming into effect of the Pensions Act, all pension funds and assets shall only be managed by Pension Funds Administrators (PFAs) licensed by the Pension Commission.

The primary functions of the PFAs include (a) opening of retirement savings accounts for all employees with a PIN attached; (b) investing and managing pensions funds and assets; (c) keeping proper books of account of all pension fund transactions managed by it including a data bank for same.

Pension Fund Custodians

Based on the wrong management and non-maximisation of previous pension schemes, the Pension Act separates the administration of the pension funds and assets from the actual custody and or safe keeping of the said funds and asset by the requirement of the licensing of Pension

Funds Custodians (PFCs).

The primary functions of the PFCs include: (a) receiving directly from the employers, the total pension contributions on behalf of the PFAs and advising the PFAs within twenty four hours, of the receipt of each contribution; (b) holding pension funds and assets in safe custody and on trust for the employees and his/her beneficiaries, in a retirement savings account; (c) assisting the PFAs in the settlement of claims and in the administration of the pension funds' investment including the collection of dividends and other related activities

PFAs & PFCs Operating Without License

The Pension Act provides that any individual or corporate body that carries on business as a PFA or a PFC without a licence from the Pension Commission commits a criminal offence. The penalty for an individual is a fine of not less than N 5Million (Five Million Naira) or imprisonment for a term not exceeding 5 years. For a corporate body, the fine is not less than N 10Million (Ten Million Naira) with a fine of N 2Million (Two Million Naira) for each Director or Officer of the PFA or PFC; the imprisonment term is also a period of not less than 5 years.

Investment Criteria of Pension Funds

The Pension Act reiterates the age long rule in investment business by requiring PFAs to invest pension funds assets strictly within the objectives of safety and fair returns on the amounts or assets invested.

Therefore, subject to the guidelines issued by the Pension Commission from time to time, the Pension Act directs that pension funds and assets should be invested in any of the following investment vehicles: (a) Bonds, bills and other securities issued or guaranteed by the Federal Government of Nigeria (FGN) and the Central Bank of Nigeria (CBN); (b) Bonds, debentures, redeemable preference shares and other instruments issued by corporate entities listed on the Nigerian Stock Exchange (NSE); (c) ordinary shares of public limited liability companies listed on the NSE with good track records having declared and paid dividends in the preceding five years; (d) Bank deposits and securities; (e) Real estate investment, etc.

Conclusion

A lot of details including Pension regulations (with guidelines?) are expected from the Pension

Commission, when it is constituted. It is hoped that the enthusiasm and positive criticisms that have greeted the Pension Act will mark the beginning of a new dawn in pension administration and management in Nigeria .

Further, a Law only works when the stakeholders maintain their respect for that Law and act in good faith concerning it.

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