

Legal Alert **Nigerian Industrial Training Fund**

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Legal Alert for August 2008 ? Nigerian Industrial Training Fund

Introduction:

There are reports of the Nigerian Industrial Training Fund ("the Industrial Training Fund") obtaining Court judgments against employers that fail to register and make statutory contributions to the Industrial Training Fund. The defence of none receipt by employers of any assessment from the Fund has largely not succeeded in the light of the provisions of the Industrial Training Fund Act, 2002 ("Industrial Training Fund Law").

A general lack of appreciation and or information on the functioning of the Industrial Training Fund could expose businesses to civil and criminal liability for non compliance with the Industrial Training Fund Law. This Alert is to give some succinct information on the functioning and advantages of the Fund to businesses in Nigeria.

Functions of Industrial Training Fund

The Industrial Training Fund was established by Law in 1971 to promote, accelerate and encourage the acquisition of indigenous skills required in industry and commerce to meet the developmental needs of Nigeria.

Direct Functions of the Fund

The Industrial Training Fund provides direct specialised training in the areas of research and consultancy services, engineering and technology, management, human resources development, safety, computers and information training, vocational and apprentice training, accounting and financial management, advisory and management consulting,

Duty of Employers under the Fund

The Industrial Training Fund Law mandatorily requires every employer having 25 or more employees with apprentices on its pay roll, in each calendar year not later than the 1st day of April of each such year, to contribute one percent of the amount on its pay roll to the Fund.

The description of employees in the Industrial Training Fund Law has a wide definition as it includes Nigerians, non Nigerians and contract staff engaged for more than three months in one calendar year whether on full time or part time basis, for salary or wages or such other consideration that may exist between the employer and the employees.

The very essence of the Industrial Training Fund is to encourage employers to provide adequate training for their indigenous employees in disciplines related to their jobs in order for there to be further improvement in the manpower capability of the employees which in turn benefits' the employers and the country.

The Industrial Training Fund Law also requires employers to accept students on industrial attachment and training in furtherance of the objectives of this Law.

Contributions to the Fund

As stated above, every employer with more than 25 employees and apprentices must contribute one percent (1%) of the amount on its pay roll to the Industrial Training Fund.

The Industrial Training Fund through its governing Council may refund up to 60% of the amount contributed by a up-to-date levy contributor/employer to the Fund if the Council is satisfied that the training programme of the employer for its employees in the relevant period is adequate.

According to the Industrial Training Fund, the aim of the reimbursement scheme is to ensure that training activities of every employer is evenly distributed amongst the various strata of each employer's work force.

All refunds must be notified to the Federal Board of Inland Revenue ("FBIR").

Further Condition for Reimbursement

A further condition that a levy contributor/employer must meet in order to claim up to 60% in reimbursement is the requirement that a minimum of 15% of the total workforce of the employer must be trained annually before such an employer can qualify for the full 60% reimbursement under the Fund.

Applications for reimbursements must be accompanied by evidence of the nature of the training that the employees or apprentices attended with the training course receipts, certificates of attendance and receipts of levy paid to the Industrial Training Fund.

Penalties for none Contributions

Any employer that is required to make contributions under this Law and fails to make such a contribution within the prescribed period is liable on conviction to pay the contribution in addition to a fine of 5% of the amount that is unpaid.

Corporate Employers that do not train their employees are equally liable on conviction to a fine of N5,000 for the first breach and N10,000 for each subsequent breach. Principal officers of corporate employers could equally be liable if found quilt to a fine of N1,000 or to a term of imprisonment of two years imprisonment for a first breach and where a second or subsequent breach occurs, to a term of two years imprisonment without the option of a fine.

Recovery, Statute of Limitation & Disclosures

Any contribution that is not made with any related fine are recoverable as debts in civil proceedings within a period of six years from the date when the contribution or contributions ought to have been made.

Employers who fail to furnish returns and or information about their employees and their training programmes to the Industrial Training Fund may find themselves exposed to the discretion of the Fund using its best of judgement assessment as to the appropriate amount to be contributed by the employer to the Fund. This is without prejudice to the Fund reverting to the employer at such future time should the Fund discover that its best of judgement assessment was underestimated. False or deliberate untrue information and returns provided to the Fund by an employer is an offence which on conviction, for a corporate body, attracts a fine of N5,000 for a first offence and N10,000 for each subsequent offence. For executives of the corporate body, the penalty is a fine of N1,000 or two years imprisonment for a first offence and three years imprisonment without the option of a fine for each subsequent offence.

Conclusion

The Industrial Training Fund has not fulfilled its enormous potential of ensuring that the required manpower skills and knowledge required by the country in the twenty first century are provided to the Nigerian economy. Employers and employees do not have the necessary information about the requirements and workings of the Industrial Training Fund or the advantages of training their work force.

Employers who comply with the provisions of the Industrial Training Fund Law and send their employees to relevant training programmes could have the efficiency and profits of their enterprise further maximised by a knowledge based skilled work force. Advance annual liaison with the Industrial Training Fund as to the local and overseas training programmes that the employer would undertake in the future with request for suggestions from the Fund would be of benefit to all concerned.

Further information about the Industrial Training Fund can be found on its website www.itf-nigeria.com which is an invaluable resource in the preparation of this Alert.

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