

JANUARY 2005 LEGAL ALERT: PENSION WORKING GUIDELINES.

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REACTIONS TO LAST LEGAL ALERT.

Happy New Year! The end of the year 2004 holidays were welcomed but for the Tsunami disaster in South East Asia. Our condolence to the people and governments who lost their beloved ones in this unfortunate disaster.

Our Legal Alert for December 2004 was on burning business and legal issues that will affect you, in year 2005 and for which you need to pay more attention and plan to meet these challenges. You can find this Alert on our web site ? www.oseroghoassociates.com or you can go direct through this web link:

Reactions to the last Legal Alert were very good. It included the Alert been feature article in the business site, www.moneywise-ng.com in the last week of December 2004. This site, in which our articles are featured in the Moneywise Law Column, is recommended to every business development person.

ALERT: PENSION SCHEME TRANSITIONAL GUIDELINES.

In our last Legal Alert, Pension matters was one of the issues that we predicted will have key developments in year 2005. The National Pension Commission (NPC), as Regulator on Pension matters in Nigeria, has just released the transitional guidelines for the implementation of the provisions of the Pension Reform Act, 2004 (Pension Act).

For an in-depth analysis of the provisions of the Pension Act and how it will affect you, you can again visit our web site www.oseroghoassociates.com. Also, NPC has a web site ?

www.pencom.gov.ng - where you can find the Pension Act 2004, its guidelines, frequently asked questions, etc.

PENSION TRANSITIONAL GUIDELINES.

The Pension Transitional Guidelines are divided into Sections. Section 1.1 of the Transitional Guidelines on the Pension Act provides that the guidelines apply to both private and public sector employees. As NPC has not licensed Pension Fund Administrators (PFAs) and Pension Fund Custodians (PFCs), employers in both the public and private sectors of the Nigerian economy are, as a transitional measure, required to open Temporary Retirement Savings Accounts for all their

employees. Into these Savings Accounts, pension contributions by both the employer and the employees will be paid with the slight distinguishment that public service employees are entitled to the issuance of redeemable Federal Government Bonds; the latter is explained later on this Alert.

Section 2.3 of the Transitional Guidelines requires already existing defined benefits schemes, who have not already undertaken actuarial valuations of their pension scheme within twelve (12) months of the publication of the Guidelines, to undertake one, ninety (90) days from the date of the publication of the transitional guidelines. Also, employers are required to compute past retirement benefits using the employees existing contract of service. It is expected that these benefits will be paid into transitional retirement savings accounts in favour of the employees. Section 2.13 of the Guidelines requires that all pension contributions under the transitional arrangements must within thirty (30) days of the licensing of PFAs and PFCs, be paid by the employer into retirement savings accounts opened by the employees with PFAs of their choice. The employer shall immediately notify NPC of such transfers.

Section 2.19 to 3.3.0 of the Guidelines provides transitional regulations on the vexed Nigeria Social Insurance Trust Fund (NSITF). It requires NSITF to compute, open and credit retirement savings accounts for each contributor or beneficiary under the old NSITF scheme as a part of the transitional arrangement. As we asserted in our analysis of the Pension Act last year, the transitional guidelines requires that sums already received by NSITF shall be credited to respective retirement accounts and remain with a PFA appointed by NSITF for not less than five (5) years from the commencement of the Pension Act. Thereafter, each beneficiary or contributor is free to choose a PFA to manage his or her contribution.

Also, pending the licensing of an NSITF PFA, NSITF shall compute and pay all retirement contributions into individual employees retirement savings accounts.

Section 3.2 to 3.5 makes transitional provisions for employees in the public service. This section requires the government to compute the retirement benefits of its employees using employees' terms of contract of service. The amount accruing from this computation shall entitle each employee to a redeemable Federal Government Retirement Bond, which Bond is redeemed from the Redemption Fund Account established by the Pension Act and managed by the Central Bank of Nigeria.

GUIDELINES FOR CLOSED PENSION FUNDS.

Firstly, employers with Closed Pension Funds are required to apply to NPC for licensing to administer a Closed Pension Fund. Guidelines governing the licensing and administration of Closed Pension Funds are contained in Section 4.14 to 4.15 of the transitional guidelines. The

guidelines on the requirements for licensing are a rehash of what is in the Pension Act. They include: -

- (a) The pension scheme must be fully funded.
- (b) The pension funds and assets shall be fully segregated from the funds and assets of the employers. This is to enhance security of the contributions to the fund.
- (c) A licensed Pension Fund Custodian shall hold the pension funds and assets.
- (d) Every employee has the right to exercise the option of remaining or opting out of an existing closed pension scheme.
- (e) All investments in assets other than those permitted under the Pension Act, by the Closed Pension Fund, may be maintained subject to the regulations, rules and standards to be published from time to time by NPC.
- (f) The employer shall ensure that any short fall in the Closed Fund will be made up within ninety (90) days; presumably after the publication of these guidelines.
- (g) The employer shall have managed the pension fund and assets for a period of not less than five (5) years prior to the commencement of the Pension Act.

COMMENTS ON THE PENSION GUIDELINES.

1. The real challenge for NPC and the beneficiaries under the new Pension arrangement is compliance with the transitional and post transitional provisions of the Guidelines. Past efforts at administering pension schemes have ended in disasters. Also, government's track record on compliance with processes is not worthy of commendation. It is expected that NPC will rise to the challenge of ensuring full implementational compliance by both the private and public sector employers.

2. The five (5) year restriction on current contributors to NSITF being able to move their contributions to PFAs of their choose is worrisome. This is particularly when it will be administratively very cumbersome for a contributor to have two PFAs; one for the old NITF contributions and another for the new Pension Act PFA.

3. Equally worrisome is the restriction that Closed Pension Funds that have being in existence for less than five (5) years before the commencement of the Pension Act will not be licensed to operate as a Closed Pension Fund. We are of the view that some of the largest and better administered pension schemes in Nigeria are less than five (5) years old from the date of the commencement of the Pension Act. It is hoped that the Nigeria Pension Commission will look at this again and make allowance for strong and well managed Closed Pension Schemes.

ECONOMIC & FINANCIAL CRIMES COMMISSION (AMENDMENT) ACT, 2004.

The Economic & Financial Crimes Commission (Amendment) Act 2003 was amended in 2004 by

the National Assembly. We had done a Newsletter on the 2003 EFCC Act; this you can find in our web site using this link

We intend to do an update on this legislation soon. This is because though the Economic & Financial Crimes Commission (EFCC) has been more in the news on matters relating to politics and political opponents, a thin line still exists for international businesses on what a normal business advantage is, for example, foreign exchange transaction, as against an economic or financial crime. Remember the popular saying that ignorance of the Law is not an excuse.

Motivational Quote for January 2005:

Our quote for this month is: people who do little things well can do great things better. People who cannot manage little things will not be entrusted with great things.

Have a good year!

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