



Femi Johnson & Company Limited (*Incorporated Insurance Brokers*) RC.7415

AN APPRAISAL OF THE NIGERIA PENSIONS REFORM ACT 2004.

The Nigeria Pensions Reform Act was signed into law on the 24th of June 2004. It repeals the 1990 Pensions Act and establishes a uniformed contributory scheme for public and private sector employees. Contributions are to be made by both the employer and employee; and together, they fund the employee's retirement benefit account, which is maintained by a professional and privately managed Pension Fund Administrator (PFA). However a Pension Fund Custodian (PFC) holds the actual assets. The Act establishes the National Pension Commission (NPC), which is charged with the responsibilities for matters relating to the regulation, supervision and effective administration of the contributory scheme. The Act sets out transitional arrangements to facilitate a smooth transition from existing arrangements to the uniform contributory scheme. Two categories of persons are exempted from the scheme. They are beneficiaries of existing schemes who have less than 3 years from the commencement of the Act to retire and judicial officers as defined in Section 291 of the 1999 Constitution.

The objectives of the scheme are as follows:

- *To ensure that every employee receives his retirement benefit as and when due.
- *To assist improvident individuals by ensuring that they save in order to cater for their livelihood during old age; and
- *To establish a uniform set of rules for the administration and payments of retirement benefit for employees of both the private and public sector.

Any law or enactment whose provisions are inconsistent with the Act is inferior and invalid in so far as it is inconsistent.

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In relation with the National Insurance Trust Fund (NSITF) the Act allows NSITF to establish a company to function as a PFA. It mandates NSITF to open and credit respective savings account for each prior contributor. Assets managed by the NSITF are to be transferred to a custodian. Beneficiaries under NSITF shall after 5 years of the commencement of the Act have an option of selecting his PFA.

A pension scheme in the private sector already existing, may continue to operate as long as they conform with the provisions of the Act which are that:

- *the scheme should be fully funded, and in the case of any defined contributory scheme, contributions and attributable incomes should be credited to a retirement savings account for each employee.
- *the pension funds and assets are to be segregated from the funds and assets of the company.
- *the pension funds and assets are to be held by a custodian.
- *every employee must have an option of coming under the contributory pension scheme as regulated by the Act.
- * the employer must demonstrate that it possesses managerial capacity for the management of pension funds and assets for a period not less than 5years before the commencement of the Act.

In other for the scheme to function as intended, several institutions have been created. These include the National Pension Commission (NPC), the Pension Fund Administrator (PFA) the Pension Assets Custodian (PAC) etc.

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The NPC is a body corporate with perpetual succession and a common seal. Its principal objective is to regulate and ensure the effective administration of pension matters in Nigeria. This it does, by issuing guidelines for the investment and management of pension funds, licensing and supervising PFAs, custodians and other institutions relating to pension matters. It also receives and investigates complaints of impropriety and imposes due sanctions.

The PFAs must be licensed by the NPC in order to carry out their functions which includes investing and managing pension funds and assets, providing information on investment strategy, maintaining books of account on all transactions, pay retirement benefits to employees in accordance with the Act etc.

The PAC is the institution that holds the pension funds and assets and it must be licensed by the NPC to perform its functions which includes receipt of contribution and notification of same to the NPA, hold pension funds and assets in safe custody on trust for the employee etc.

The rate of contribution is split between the employer and employee. It is a minimum of 7.5% of the employee's monthly emoluments and it is to be paid by both the employer and employee respectively. These monthly contributions are paid into the employee's Retirement Savings Account (RSA). The employer is also to maintain a life insurance policy in favor of the employee for a minimum of three times the annual total emolument of the employee.

A holder of this account cannot make any withdrawals until he attains the age of 50 years. Two exceptional cases are excluded from this condition. The first is that the employee retired on

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grounds of ill health. The second is that the employee retired in accordance with the terms and conditions of his employment.

A holder of an RSA account may only apply his balance for the following benefits:

- *A programmed monthly or quarterly withdrawal, calculated on the basis of expected life span.
- *Annuity in monthly or quarterly payments purchased from a Life Insurance company licensed by the National Insurance Commission.
- *A lump sum from the balance provided that the amount left is sufficient to procure an annuity or fund programmed withdrawals that will produce an amount not less than 50% of his annual remuneration as at the date of his retirement.

Where an employee dies or is missing in circumstances that make it reasonable to conclude he has died, his entitlements under the life insurance policy are to be paid to his RSA. The PFA is to apply the money accordingly, in favor of his beneficiary under a will, or spouse and children of the deceased or in their absence, to the recorded next of kin or in his absence, to any person appointed by the probate registry as administrator of the deceased.

Certain transactions have been prohibited in order to safeguard the interest of the beneficiary. For instance, no PFA can hold any pension fund asset, the PFA cannot keep any pension fund asset with any custodian in which the PFA has any business shares or interest or any link whatsoever. Also, no employee of the PFA may engage in any transaction with the PFA as a counterpart in relation to pension funds and assets.

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Non-compliance with the stipulations of the Act or directives of the NPC by the PFAs, custodians or any other institution with regards to pension related matters would render these institutions liable to the penalties. These penalties vary from total revocation of licenses, to payment of substantial fines or even imprisonment.

It is the Federal High Court that is vested with jurisdiction to entertain offences under the Act.

If a beneficiary is dissatisfied with the decision of the PFA or custodian; he may request in writing that the Commission review such a decision. If he is still dissatisfied, he may refer the matter to arbitration. Any arbitral award is binding on the parties and is enforceable in the Federal High Court.

Conclusively, better pension and retirement benefit is a Nigerian dream, which seemed to be a mirage in time past. However this dream is set to becoming a reality with the emergence of the Pension Reform Act.

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