

Corporate & Commercial Briefs

THE NEW PENSION REFORM ACT 2004: Whose business?

You may have heard about the new legislative kid on the block - the Pensions Reform Act 2004. Your attitude may be that it is perhaps another statute for the lawyers' shelf and not your business. Let us pry a little. Are you in paid employment in the public or private sector with an organization of 10 or more employees? Are you an employer with 10 or more employees on your payroll? Are you about to start a business employing more than 10 people? Do you know a friend/client/relative that fits the employers or employees just described? Are you a citizen interested in welfare of the retired? Whoever you are let's just say - "To whom it may concern."

Some highlights of the Pension Reforms Act

- Repeals the Pensions Act of 1990 and other Pension legislations.
- Makes Private sector participation in pension schemes mandatory.
- Creates a harmonized pension regime for public and private sector.
- Introduces new players: Pension Fund Administrators (PFA) Pension Fund Custodian (PFC), Closed Pension Fund Administrators' and National Pensions Commission (NPC).
- Contributions to scheme are made on an employer/employee ratio of 7.5% to 7.5% for all public and private sector employees, and 12.5% to 2.5% for the Military.
- Contributions by an employer or employee are tax deductible expenses.
- Employers shall maintain a life insurance policy in favour of the employee.
- Every employee shall maintain a retirement savings account in his name with a Pension Fund Administrator (PFA) of his choice.
- The PFA shall be permitted to invest the funds in government and corporate bonds, shares, bank deposits and certificates as well as open ended investment funds, amongst others.
- At retirement, the employee would have a menu of benefits: Programmed withdrawals, Annuities, lump sums
- Employee contributions are carried over when they change jobs
- Employees with 3 years or less to retire at time Act is passed are exempted.

Who are the new players? What are their roles?

- **National Pensions Commission (NPC):** Authority in charge of regulating Pensions matters in Nigeria.
- **Pension Fund Administrators (PFA):** NPC approved manager of pension funds, and independent accounts for each employee and the benefits that accrue to the account holder. To invest the funds subject to specified limitations. PFA'S in addition to other criteria must have a minimum paid up share capital of N150 Million.
- **Pension Fund Custodian: (PFC)** is a licensed financial institution authorized to hold the pension funds to the exclusive order of the Pension Fund Administrator. Amongst other criteria PFC should have a minimum net worth of N5,000,000,000 unimpaired by losses.
- **Closed Pension Funds Administrators (CPFA)** is a company that already runs a pension scheme and has the approval of the NPC to continue to administer its pension fund.

How does the Act affect you?

Employees:

- It is mandatory for employees to contribute their portion of their income to their retirement funds account.
- Employees are obliged to choose their individual Pension Fund Administrator.
- Employees ought to transfer their accounts to new employer when they change jobs.

Employers:

- For employers with 10 employees and above it is mandatory to contribute 7.5% to the scheme.
- Companies that already operate a pension scheme are required to transfer the management of these schemes to duly registered Pension Fund Administrators (PFAs).
- Employers are obliged to maintain a life insurance policy in favour of employee.

What do stakeholders say about the Act?

Organized Labour

- The reform does not address outstanding pension liabilities estimated at N2 trillion
- Abolition of gratuity in public sector unfair
- Workers contribution is too high compared to other countries.

Private Sector Employers

- Why should the worker dictate which PFA to use? After all it is a joint contribution!
- National Assembly exceeded its mandate by legislating on private sector pensions. Item 44 of the Exclusive legislative List in the Constitution stipulates that the National Assembly can only legislate on "pension, gratuities and other like benefits payable out of the Consolidated Revenue Fund or any other public funds of the federation".

Financial Analysts

- The pension reforms can contribute significantly to economic growth of the country. In Chile after similar reforms between 1984 and 1997, the country's economy grew at about 7% on average per year, investment and savings boomed and inflation was reduced from around 25% to 2-4% range. Large pool of internal savings will fund long term investment projects like real estate development.

And this writers comments

My comments will deal mainly with the security of pension funds. I hope that what the Act lacks in this regard the NPC regulations will bring to the table. After all what is the Pension account without the security of the funds? A cursory look at the Act shows no tangible fall back for the worker who chooses a PFA that invests poorly and causes a loss. S 71 simply says: *"All retirement savings account holders who have contributed for a number of years to a licensed pension fund administrator shall be entitled to a guaranteed minimum pension as may be specified from time to time by the Commission"* This seems like the gratuitous N50,000 given by Nigerian Deposit Insurance Corporation to failed bank victims a few years ago. I would like to assume that Pension funds being the workers fall back will be treated as sacrosanct. S 98 that shields pension funds from distress, liquidation or winding up is salutary. However one hopes that the regulations to be emplaced by the NPC will cover total recoup and pecuniary redress in event of PFA'S negligence or even genuine error in investing the funds. These regulations should specify modes for complete reparation in such circumstances. After all what would the pension savings be without the security of the funds? Perhaps private Insurers may get creative in trying to insure these sums placed with PFA'S against the vagaries of a volatile economy. Furthermore in my opinion it is advisable to allow the worker not only choose his

PFA but to give his consent before his retirement savings are invested in riskier ventures like real estate rather than a simple definite fixed deposit account in a first class bank. Still on the security of the funds I would like to see the NPC regulations cover the failure of Closed Pension Fund Administrators to deliver on pay day. A closed pension fund administrator should not be a haven for private manipulation. Such CPFA should be required and willing to back its pension funds with its assets in case of negative eventualities.

From a lawyers standpoint the right of appeal to the NPC and the option of Arbitration or the Investment and Securities Tribunal under Part XIII may carve a new breed of "actuarial lawyers".

I may have a few more comments but at this juncture I welcome you to the debate. Indeed it is your business!

Ayuli Jemide is a partner with Detail Solicitors.