G.R.F DALLEY & PARTNERS

THE PENSION REFORM ACT 2014 - NIGERIA

NEWS & UPDATES

THE PENSION REFORM ACT 2014

On the 1st of July 2014 the President of the Federal Republic of Nigeria signed the Pension Reform Act 2014 (The Act) into Law. The Act repeals the **Pension Reform Act No.2 Laws of the Federation of Nigeria 2004** and is in force to regulate the administration of uniform contributory Pension Scheme for both the private and public sector in Nigeria. To ensure that every person who works in either the Public Service of the Federation Federal Capital Territory, States and Local Governments or the Private Sector, receives retirement benefits as and when due.

Essentially, the Act seeks to assist improvident individuals by ensuring that they save in order to cater for livelihood during later years.

The following are the major highlights of the Act.

EXPANSION OF COVERAGE OF CONTRIBUTION TO THE PENSION SCHEME IN THE PRIVATE SECTOR

The Act expands the coverage of the Contributory Pension Scheme (CPS) to private sector Companies with fifteen (15) employees and above as opposed to 5 or more employees

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under the previous law. However, employees of organisations with less than three (3) employees may also voluntarily participate in the scheme in accordance with guidelines issued by the Commission. This is in line with Governments drive to capture the informal sector under the Pensions Scheme (**Section 2(2)**).

In addition, self-employed persons are entitled to participate under the Scheme in accordance with guidelines to be issued by the Commission notwithstanding the requirement of 3 or more persons (**Section 2(3)**).

UPWARD REVIEW OF RATE OF CONTRIBUTION

Contribution shall be as follows:

i. **A minimum of ten percent by the employer and**

ii. **Minimum of eight percent by the employee**

The Act reviews upwards, the minimum Pension Contribution from 15% to 20% of monthly emolument in cases where the employer elect to bear the full responsibility of the Scheme. Clearly this is designed to provide additional benefits to the workers' Retirement Savings Account and thereby enhance respective monthly pension benefits upon retirement (**Section 4).**

Interestingly, the rates of contribution may upon agreement between employer and employee, be revised upwards from time to time, subject to notification of the Commission (**Section 4(2))**.

UPWARD REVIEW OF THE PENALTIES AND SANCTIONS

The Act creates new offences and provides stiffer penalties for mismanagement and/or diversion of pension funds/assets. Under the revised law, operators are liable upon conviction for misappropriation of pension funds to not less than 10 **years imprisonment and/or a fine of an amount equal to 3 times the amounts misappropriated or diverted** (**Section 100 and 101).** The decision by law makers to impose stiffer punishment is a clear reflection of the encouraging growth in pension contributions and the need to deter infractions in respect of this burgeoning sector.

POWER TO INSTITUTE CRIMINAL PROCEEDINGS AGAINST EMPLOYERS FOR REFUSAL TO REMIT PENSION CONTRIBUTION

A fresh and encouraging addition is the Pension Commission's **(Pencom)** power to institute criminal proceedings against employers who persistently fail to deduct and/or remit Pension contributions of employees within stipulated time, subject to obtaining the fiat of the Attorney General of the Federation (**Section 105)**.

CORRECTIVE ACTIONS ON FAILING LICENSED OPERATORS

Under the Act Pencom receives new powers entitling it to take proactive corrective measures against unlicensed operators whose actions or inactions jeopardise the safety of Pension Assets (**Section 59 (1) & (2)**).

This provision further fortifies the Pension Assets against mismanagement and/or systemic risk.

Section 64(5) provides as follows:

"Notwithstanding the provisions of the Companies and Allied Matters Act, the Commission shall in its revocation order, withdraw the powers of the board of the Pension Fund Administrator or Pension Fund Custodian over the pension funds and assets held or administered by the company and may appoint administrators with relevant qualifications who shall superintend the transfer of the assets and funds held or administered by the Company and exercise the powers of the board where necessary in accordance with the Act.

Section 64(6)

(6) The Commission shall-

(a) cause the Retirement Savings Accounts being managed by the Pension Fund Administrator whose license was revoked under subsection (1) of this Section

to be transferred to another Pension Fund Administrator or Administrators as the case may be; and

(b) Transfer the pension fund and assets being held by a Pension fund Custodian whose license was revoked under subsection (1) of this section to another Pension Fund Custodian or Custodians as the case may be.

Section 64(7)

(7) The Commission shall publish by notice in the Federal Gazette, the list of the Pension Fund Administrator or Pension Funds Custodians whose licenses have been revoked."

Section 78 provides as follows:

(1) To assist it in carrying out its functions and ensuring compliance with the provisions of the Act, every Pension Fund Administrator shall establish:

(a) Risk Management Unit; and
(b) Investment Strategy Unit.

(2) The Risk Management Unit shall:

(a) Determine the risk profile of the investment portfolios of the Pension Fund Administrator;
(b) Draw up programmes of adjustments in the case of deviation;
(c) Determine the level of reserves to cover the risks of the investment portfolios;
(d) Advise the Pension Fund Administrator on maintaining adequate internal control measures and procedures and
(e) Carry out such other functions relating to risk management as the Pension Fund Administrator may from time to time determine.

(3) The Investment Strategy Unit shall:

(a) Formulate strategies for complying with investment guidelines issued by the Commission;
(b) Determine an optimal investment mix consistent with risk profile agreed by the board of the Pension

Fund Administrator;

(c) Evaluate the value of the daily market–to-market portfolios and make proposals to the board of the Pension Fund Administrator;

(d) Review the performance of the major securities of the investment portfolios of the Pension Fund Administrator on periodic basis, and

(e) Carry out such other functions relating to investment strategy as the board of the Pension Fund Administrator may from time to time, determine.

The Act creates a newly implemented provision for the repositioning of the **Pension Transition Arrangement Directorate (PTAD)** (**Section 42)**. This is to ensure greater efficiency and accountability in the administration of the defined Benefits Scheme in the Federal Public Service such that payment of pensions would be made directly to pensioners' bank accounts in line with the current policy of the Federal Government.

The Act also makes provisions for the creation of additional permissible investment instruments to accommodate initiatives for national development such as investment in the real sector, including infrastructure and real estate development.

ACESS TO BENEFIT IN EVENT OF LOSS OF JOB

Access to benefits after job loss has been reduced from a waiting period of **Six (6) months to Four (4) months.**

EXEMPTION FROM THE SCHEME

Section 5 (1)(a)-(d) of the Act, exempts the following class of persons:

(a) The categories of persons mentioned in **Section 291 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)** including members of the Armed Forces, the Intelligence and Secret Services of the Federation

(b) Any employee who is entitled to retirement benefits under the pension scheme existing before the 25th day of June 2004.

(c) Professors covered by the **Universities (Miscellaneous Provision (Amendment) Act, 2012**

(d) Other categories of employees entitled by virtue of their terms and conditions of employment to retire with full retirement benefits."

The Act has consolidated earlier amendments to the 2004 Act, which were passed by the National Assembly. These as stated above include the **Pension Reform (Amendment) Act 2011** which exempts the personnel of the Military and the Security agencies from the Contributory Pension Scheme as well as the **Universities (Miscellaneous) Provision Act 2012** which reviewed the retirement age benefits of University Professors.

Furthermore, the Act has incorporated the Third Alteration Act, which amended the 1999 Constitution by vesting the Jurisdiction on pension matters in the National Industrial Court.

This publication is simply general information and does not represent legal advice. For more detailed legal advice on this and other related matters kindly send us an email on inq@grfdalleyandpartners.com

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