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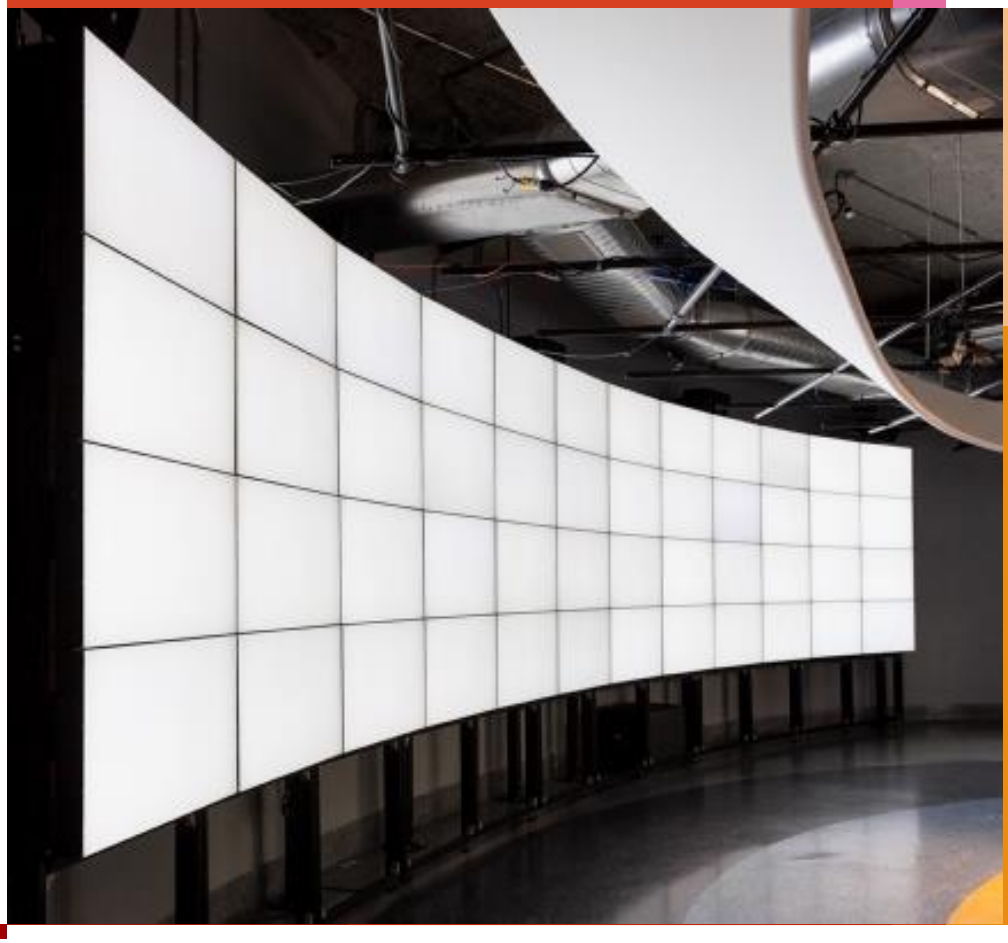
Pension Reform Act 2014

Key Highlights and Salient Points



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All you need to know

In brief

On 1 July 2014, President Goodluck Jonathan signed into law the new Pension Reform Act 2014 which repealed the Pension Reform Act No. 2 of 2004 (repealed Act). Like the repealed Act, the new Pension Reform Act governs and regulates the administration of the contributory pension scheme for both the public and private sectors in Nigeria. The commencement date is 1 July 2014.

Some of the key changes include increase in the minimum number of employees required to make contributions under the Act mandatory, increase in the minimum contribution into the Scheme and the imposition of fines and penalties on Pension Fund Administrators (PFA) for failure to meet their obligations to contributors and violation of the provisions of the Act.

Employers may need to restructure their staff compensation to minimise the impact of likely increase in staff cost while maintaining staff take home pay at the current levels.

In detail

The Pension Reform Act 2014 (Act) was signed into law by the President on 1 July 2014. The Act does not specify a commencement date, however, Section 2 of the Interpretation Act CAP I23 of LFN 2010 is to the effect that where no date of commencement is contained in an Act, the commencement day shall be the day the Act is passed or signed into law. Unless a commencement date is inserted before the Act is gazetted, the commencement date will be 1 July 2014.

Changes in the Act have a more profound and broader effect on employers and employees of both the public and private sector.

The salient changes are outlined in the paragraphs below.

Scope of the Act

The crux of the Act is to encourage participation in the Contributory Pension Scheme (Scheme). The Scheme applies to two categories of employees. These include all employees in the public sector and employees of private organisations in which there are 15 or more employees. The Act also provides that in the case of private organisations with less than 3 employees participation in the Scheme would be governed by guidelines issued by the National Pension Commission (PenCom).

However, the Act is silent on the applicability of the Scheme to private organisations with more than 3 but less than 15 employees.

Persons exempted under the Act are substantially the same as under the repealed Act.

Contribution to the Scheme

There are changes in the rates of contribution to be made to the Scheme. Under the Act, both employer and employee are required to make a minimum of 10% and 8% respectively of the employee's monthly emoluments (7.5% of the employee's monthly basic, housing and transport allowances by both parties under the repealed Act).

The definition of 'monthly emoluments' has been expanded to mean the total emolument as

defined in the employee's contract of employment provided it is not less than the total of the employee's basic salary, housing and transport allowance.

This definition is vague and could be interpreted in several ways. Pending clarification from PenCom, one of the credible interpretations that could be considered by companies is that all items that are paid on a monthly basis (in addition to basic, housing and transport) would form part of the base on which the pension rates are applied.

The Act also provides that an employer can take full responsibility of the contribution. In that case, the contribution shall not be less than 20% of the employee's monthly emolument.
In addition, a Group Life Insurance Policy must be maintained in favour of the employee for a minimum of thrice the employee's annual total emoluments similar to the old Act.

Investments

The Act expands the scope in which the pension funds can be invested and this includes specialist investment funds and other financial instruments the Commission may approve.

Offences and Penalties

The Act includes a few novel provisions with respect to offences and penalties. The Act criminalises an attempt to commit an offence and imposes the same penalty as the offence itself.

The penalties for misappropriation have also been increased. In addition to a prison term of 10 years and a fine of three times the amount misappropriated, a convicted person would refund the amount misappropriated as well as forfeit to the federal government any property, asset or fund with accrued interest or the proceeds of any unlawful activity under the Act in his/her possession, custody or control.

The Act also criminalises any reimbursement or payment by a Pension Fund Administrator (PFA) or Pension Fund Custodian (PFC) to a staff, officer or director upon whom a fine has been imposed under the Act. The penalty prescribed for this is a minimum of N5 million.

In addition to the above and with particular reference to PFCs, the Act imposes a penalty of at least N10 million, upon conviction, where the PFC fails to hold the funds to the exclusive preserve of the PFA and PenCom or where it applies the funds to meet its own financial obligations (in the case of a Director, N5 million or a term of 5 years imprisonment or both).

Under the Act, jurisdiction is vested in a Court of 'competent jurisdiction' which includes the Federal and State High Courts including the High Court of the FCT as well as the National Industrial Court. The court may lift the veil of incorporation where necessary and ensure speedy and just determination of any case before it.

Pension Protection Fund

A pension protection fund is created under the Act to include an annual subvention of 1% of the total monthly wage bill payable to employees in the public sector, an annual pension protection levy (the percentage of which is to be determined by PenCom) and income from investments of the Pension Protection Fund.

The objective of the Fund is to serve as a hedge or guarantee for the benefit of contributors. Money from the fund is paid to the contributors in the form of minimum guaranteed pension, as compensation for shortfalls in investment of pension funds and any other use PenCom may determine from time to time.

Withdrawal from the Retirement Savings Account

The Act creates another condition in which a contributor may be allowed to withdraw from his retirement account. An employee who disengages from employment or is disengaged before the age of 50 and is unable to secure employment within 4 months of disengagement is allowed to make withdrawals from the account although not exceeding 25% of the total amount credited to the retirement savings account.

Appointment of the Director – General (DG)

Under the Act, the level of professional qualification and experience required to occupy the office of the DG of the Commission has been lowered. A person is eligible if he, amongst other criteria, possesses relevant and professional qualification in pension matters and at least 15 years cognate experience. Under the repealed Act, the relevant number of years of experience is 20 years cognate experience in pension, insurance, actuarial science and other related field.

Confidentiality

Members of board, officer, employee or agent engaged by a PFA or PFC are expected to maintain confidentiality with respect to information received in the course of their duties failing which a person may be liable, upon conviction to a fine of N10 million or custodial term of 5 years or both.

Exemption from tax

In line with the spirit of the repealed Act, the Act clearly mentions that any interests, profits, dividends, investments and other income accruable to pension funds or asset are not taxable.

Public Officers Protection Act and Pre-action Notice

The Public Officers Protection Act applies to any suit commenced against any officer of PenCom. Accordingly, the Act prevents the institution of an action against an officer or employee of PenCom for any act done in execution of the Act or any other law if not commenced within 3 months of the act or in the case of a continuous act, within 6 months after the act ceases.

Furthermore, no action can be taken against PenCom except after the expiration of one month following the service upon the Commission of a notice setting out the cause of action, particulars of the claim, name and place of abode of the intended plaintiff and the reliefs sought.

The requirement of a pre-action notice is a condition precedent to be fulfilled by a person aggrieved by PenCom or any of its officers before such persons can approach the courts. The utility is that it gives PenCom the opportunity to resolve such matters before they escalate into a full blown litigation.

Nigeria Social Insurance Trust Fund (NSITF)

Any company set up by the NSITF under the repealed Act shall continue to operate as a PFA.

The funds contributed shall be computed and credited into the respective retirement savings account opened under the Act. Any person who has retired before the commencement of the Act shall be entitled to make withdrawals from the account although not exceeding 25% of the total amount credited to the retirement savings account.

Dispute resolution

Any employee aggrieved with his employer of PFA is obligated to approach the Commission for a redress before exploring arbitration or commencing an action at the National Industrial Court. Previously under the repealed Act, the avenues for dispute resolution were arbitral panels and the Investment and Securities Tribunal.

The takeaway

The inclusion of more penalties targeted at individuals is expected to serve as a deterrent to pension crimes. The vesting of jurisdiction in three superior courts of record suggests the law gives more opportunities for quick dispensation of justice and dispute resolution. This is a positive development as it gives more contributors confidence in the Scheme.

Employees may find some satisfaction in the fact that employers would contribute at least 10% of monthly emoluments if they are lucky to keep their jobs. Employers must prepare for either an increase in staff cost or some restructuring of staff compensation to maintain the contribution at the current levels.

It is expected that PenCom will provide clarifications or issue guidelines regarding certain aspects of the new Act. These include commencement and transition arrangements, contributions by employers with 3 to 15 employees, combined contribution where the employer choses to solely contribute and definition of monthly emolument.

Let's talk

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