



HIGHLIGHTS OF AO2LAW'S WEBINAR: "PENSION FUND ADMINISTRATORS AND PENSION FUND CUSTODIANS: RETHINKING THE STRICTURES ON COMMON CONTROL."

Introduction:

On the 17th of April 2024, the firm of Anaje. Olumide. Oke. Akinkugbe (carrying on business as AO2LAW®) held a stakeholders' webinar with the theme: "*Pension Fund Administrators and Pension Fund Custodians: Rethinking the Strictures on Common Control*". The webinar commenced with a keynote address delivered by Mr. Chinedu Anaje, FCI Arb, a Partner at AO2LAW. In his address, Mr. Anaje highlighted the roles of the key players within the Nigerian pension industry and reiterated the need for continuous stakeholder engagement to ensure the growth and development of the pension industry in Nigeria. He equally expressed the view that while the extant law on pensions in Nigeria, the Pension Reform Act of 2014 (the "Act") had been largely successful in actualising its objectives, it was imperative for the stakeholders within the sector to mull over a possible fine-tuning of certain provisions of the Act to ensure alignment with economic realities and international best practices in the administration of pensions.

The session drew participants from players within the pension industry, the National Assembly, and other key players of different sectors of the economy. The webinar had a qualified panel drawn from all the stakeholders in the pension value chain. On the panel were Mr. A. M. Saleem; Head of the Surveillance Department at the National Pension Commission (the "Commission"), Uloaku Ekwegh; the Company Secretary and Head of Legal at Fidelity Pension Managers Limited, Mr. Tunde Folayan; the Chief Compliance Officer at First Pension Custodian Limited, Mr. Oyeyemi Oke; Partner, AO2LAW, and Mr. Chinedu Anaje, FCI Arb; Partner, AO2LAW. The session was moderated by Chukwuemeka Ozuzu; Senior Associate at AO2LAW.

The Perspective of the Regulator:

In his submissions, Mr. Saleem reiterated that the Commission had been very diligent and meticulous in the discharge of its statutory functions which has led to the recovery of substantial unremitted contributions totalling over 12 billion Naira and the imposition of penalties on errant employers in accordance with the extant provisions of the Act. Mr. Saleem equally posited that the Commission had been issuing certificates of compliance to employers who had fully complied with their remittance

obligations and highlighted that in line with the provisions of the Public Procurement Act 2007, no company could be awarded a government contract without the presentation of a certificate of compliance from the Commission. To galvanize more employers into compliance, Mr. Saleem was of the view that it may be necessary to consider an amendment of the Act to grant the Commission the powers to distrain the premises of defaulting entities. On the issue of rethinking the structure on common control of Pension Fund Administrators (“PFAs”) and Pension Fund Custodians (“PFCs”), Mr Saleem expressed the view that it was essential to maintain the bifurcation in the control of PFAs and PFCs to forestall any possible abuse.

The Perspective of the Key Players in the Nigerian Pension Industry:

1. Increasing Public Awareness and Participation in Nigerian Pension Scheme:

The stakeholders suggested a collaborative approach which will involve all the players within the Nigerian pension industry, to sensitise the public on the benefits of the Contributory Pension Scheme (“CPS”) and the need to plan for retirement. Part of the strategies proposed include: (i) targeted publicity campaigns in schools and universities; (ii) incentivising participation in the CPS; (iii) adoption and implementation of the micro-pension scheme; and (iv) general reforms within the pension scheme.

2. Amendments to the Act:

The stakeholders proposed several changes to the Act, including: (i) adjusting the presumption of death timeline to align with the provisions of the Evidence Act; (ii) increasing the minimum contribution percentages; (iii) allowing retirees to assess their accrued rights before disbursement by the government; and (iv) granting beneficiaries access to portion of funds in their Retirement Savings Accounts (RSA) to address medical needs.

3. Common Control of PFAs and PFCs:

The stakeholders discussed the restrictions on common control of PFAs and PFCs as contained in the provisions of Section 77 of the Act and the need for flexibility in regulation to balance business requirements and pension funds/assets protection. While a more liberalized approach for common control of PFAs and PFCs was suggested, the Commission’s representative pointed out potential issues such as conflicts of interest and improper disposal of assets.

4. Improving Pension Fund Investments in Nigeria:

The stakeholders expressed the view that by and large, pension funds had been performing creditably well with respect to high yields for contributors. To ensure greater returns, there may be a need for the PFAs to diversify their investment portfolios into non-traditional investments and engage experts in the various target fields to provide a more nuanced approach to making investment decisions. To actualise this, it was suggested that there may be a need for a review of the Act and the investment regulations issued by the Commission to provide the PFAs with the legal framework within which to make such investment decisions.

5. Facilitation of Offshore Investments:

In spite of the broad investment opportunities granted to PFAs under existing regulations ranging from instruments such as private equity, shares, commercial papers, etc., stakeholders however, acknowledged the impact of the fluctuating inflation rates and forex on return on pension investments. Furthermore, the inaccessibility of forex to enable PFAs to explore offshore investments posed a major challenge in hedging against the risk of inflation. In response, the Commission's representative indicated that the guidelines for offshore investments were currently in the works to eliminate the barrier to forex. This will consequently, hedge against inflation and guarantee higher returns on pension investments.

Any Legislative Intervention(s) in the Works?

In his submission in the course of the webinar, Honourable Hussaini Mohammed Jallo, the Honourable Member representing Igabi Federal Constituency in the House of Representatives and the Chairman of the House Committee on Pensions, commended AO2LAW for organizing such a timely and topical webinar to deal with the front burner issues on the management and administration of pensions in Nigeria. Honourable Jallo indicated that at present, conversations were ongoing to possibly amend some provisions of the Act that had become obsolete and improve checks and balances on the Commission and other industry players. Some of the Sections of the Act identified by Honourable Jallo for possible amendment include (i) S.4(6); (ii) S.19(2)(d); (iii) S.25; (iv) S.42(2); (v) S.89(1)(a).

Honourable Jallo applauded AO2LAW for taking the initiative to hold such a stakeholders' engagement and sought the firm's participation in stakeholder engagements which would take place in the near future to give insights and share their perspectives on pertinent issues as they relate to the industry.

Next Steps

From the conversations had in the webinar, the following are the next steps for all stakeholders in keeping the momentum high with due regard to the realignment of the pension industry to resolve perceived bottlenecks and challenges in the smooth operation of the industry:

1. More work and collaborative efforts between the Commission, the Legislature and other key stakeholders should be had to enhance the operability of the Pension Reform Act, 2014. This would include a potential amendment of certain sections of the Act including but not limited to S.77, S.4(6), S.19(2)(d), S.25, S.42(2), S.89(1)(a) to address issues, such as restrictions on common control, recoveries, voluntary contributions, group life insurance, and access to medical bills for retirees and other incidental issues.
2. Foster collaborations between all stakeholders to develop and implement a comprehensive sensitization plan to increase awareness and understanding of the CPS, focusing on targeted segments of society, especially the informal sector.
3. It would be useful for the Commission to collaborate with the Central Bank of Nigeria to finalize and communicate the guidelines for offshore investments, enabling PFAs to access foreign currency for diversifying investments and hedging against inflation.

4. Organizing stakeholders' engagement meetings to discuss amendments to the Act and gather inputs from industry players and thought leaders.
5. A holistic review of the Micro Pension Plan framework to introduce sweeteners and incentives that will encourage participation, particularly from the informal sector.

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