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PENSION CUSTODIANSHIP IN NIGERIA AND SAFEGUARDING OF RETIREMENT ASSETS

INTRODUCTION

Retirement planning and the safeguarding of retirement assets are vital aspects of ensuring financial stability and security for individuals after their active working years. It is, therefore, imperative to put in place the appropriate infrastructure that guarantees an efficient and transparent management process as well as relatively unfettered access to retirement assets. Such retirement assets include Annuities, Retirement Savings Accounts (RSAs), and defined benefit plans, such as the traditional employer pension plans.

In Nigeria, the main legislation guiding the administration, regulation, and protection of retirement benefits is the Pension Reform Act 2014 (the "**Act**"). To effectively administer the contributory pension scheme, the Act establishes two key stakeholders viz: (1) Pension Fund Custodians (PFC); and (2) Pension Fund Administrators (PFA). By design, PFCs and PFAs work closely towards ensuring that retirement benefits are duly and properly overseen and managed in favour of contributors. While PFAs are statutorily charged with the management and investment of pension funds (retirement assets) on behalf of contributors, it is the responsibility of PFCs to keep the pension funds and assets in safe custody and carry out transactions on behalf of the PFAs. The Act provides a robust set of responsibilities for PFCs, who stand as critical guardians to ensure the integrity and security of the intricate landscape of pension fund management.

This article delves into the multifaceted role of PFCs, highlighting their pivotal contributions to ensuring the protection and stability of retirement assets within the Nigerian pension regime.

The Act under **Section 56** requires that PFCs must be companies incorporated under the Companies and Allied Matters Act ("**CAMA as amended**") and licensed by the

National Pension Commission ("**PenCom**"), which is the apex regulatory authority in the administration of pension funds.

The applicant company for a pension custodianship license must be wholly owned by a licensed financial institution with specified net worth as may be determined by PenCom from time to time. In addition, the parent company must issue a guarantee to the full value of pension assets held by the PFC. PFCs are in charge of holding and safeguarding the pension assets and monies in the RSA in trust for employees on behalf of the PFAs. Typically, to ensure the safe custody of the funds, securities, financial instruments, and documents of title of the assets of the pension scheme, such assets are held in accordance with such terms and conditions of service as may be specified in the instrument of appointment of the PFC.

The roles of PFCs as captured under **Section 57 of** the Act include:

1. **Receiving and Safeguarding Contributions:** The initial step in securing retirement assets begins with the meticulous handling of contributions. The Act mandates PFCs to receive total contributions promptly and credit the accounts of PFAs immediately. This immediate transaction ensures transparency and efficiency in the contribution process. Furthermore, PFCs are by the provisions of **Section 70** of the Act to maintain all pension funds and assets in their custody to the exclusive order of the relevant PFA and the PenCom.

2. **Notification and Reporting:** Timely communication is paramount in the pension fund ecosystem. It is the responsibility of PFCs to notify PFAs within 24 (twenty-four) hours of receiving contributions. This rapid notification mechanism enables PFAs to maintain real-time oversight and ensures that any discrepancies can be promptly

addressed. Additionally, the Act under **Section 69(c)** emphasizes the reporting of unusual occurrences to PenCom, to ensure proactive risk management.

3. **Administration of Investments:** PFCs play a pivotal role in the administration of pension fund investments on behalf of PFAs. This includes settling transactions, collecting dividends, bonuses, rental income, commissions, and other related activities. By actively managing these investment activities, PFCs contribute to the growth and overall performance of the pension fund portfolio.

4. **Reporting and Analysis**: The Act requires PFCs to report to PenCom on matters relating to the assets they hold on behalf of PFAs. This reporting, done at intervals determined by PenCom, enhances transparency, and provides regulatory authorities with the necessary insights for effective oversight. In addition, the Act emphasizes the role of PFCs in undertaking statistical analysis on investments and returns, providing valuable data to both PFAs and PenCom.

5. **Proxy Voting and Compliance:** In a bid to institutionalize transparency in the administration of pensions, the Act mandates PFCs to execute relevant proxies in favour of PFAs to ensure that PFAs have a voice in decisions impacting their investments. This has the knock-on effect of engendering good governance practices in the management of pension fund assets. Additionally, PFCs are required to carry out other functions as prescribed by regulations and guidelines issued by PenCom. This ensures ongoing compliance with evolving industry standards and best practices.

6. **External Audits and Financial Accountability**: The Act, in **Section 66**, mandates PFAs and PFCs to maintain proper books of account and records, conducting annual audits by qualified external auditors within 3 (three) months from the end of the year. External auditors engaged by PFAs and PFCs play a crucial role in safeguarding pension funds. They are obligated to report extreme situations, evidence of financial collapse, material diminishing of net assets, weaknesses in accounting systems, misleading financial information, fraud or misappropriation, and events affecting confidence in management. This financial scrutiny extends further, requiring from PFAs and PFCs the submission of audited financial accounts to the PenCom for approval within 4 (four) months, publication in newspapers, and conspicuous exhibition at offices and branches. This is in line with **Section 66(3)** of the Act.

7. **General Obligations and Responsibilities:** By a combined reading of **Sections 69** and **70** of the Act, some general obligations are imposed on both PFAs and PFCs, emphasizing compliance with regulations, guidelines, and directives from the PenCom. Noteworthy obligations include ensuring that pension funds are managed in accordance with the law, reporting unusual occurrences promptly, reporting employer default in contribution remittance, facilitating account transfers, and providing fidelity insurance cover for staff.

8. **Restrictions and Prior Consent:** There are imposed restrictions on PFAs and PFCs, requiring prior written consent from PenCom for various significant corporate actions. These include agreements or arrangements related to shareholding, share capital restructuring, amalgamation or merger, restructuring, and employing management agents. PenCom, by the provision of **Section 24(i)** also reserves the right to move pension funds and assets from one PFA or PFC to another when it believes that the funds and assets are endangered.

A comparative analysis of pension custodianship in similar climes like Ghana, places similar but further responsibilities on the PFCs as provided under the extant provisions of the National Pensions Act, 2008 (the "**Ghanaian Act**"), administered by the National Pension Regulatory Authority (the "**NPRA**"). These include:

i. The business of the PFC shall be to strictly provide custody of pension fund assets, to hold and deal with such assets strictly in accordance with directions given by the trustees and the NPRA, in conformity with the Ghanaian Act.
ii. The pension fund assets in custody shall be kept separate and distinct from the PFC's own assets.
iii. The PFC shall bear the full replacement cost, including any incidental costs, in the event of loss of pension fund assets resulting directly or indirectly from fraud, negligence, willful default, misconduct or error by the PFC or its employees.

iv. The PFC shall make full identification of the pension fund assets held on behalf of the trustees in its books. An investment register shall be maintained to record all investments effected on behalf of trustees. The minimum information to be contained in the register shall include a description of the investment, effective date, amount, and remarks.
v. A proxy register shall be maintained to capture all meetings (i.e. Annual General Meetings and Extraordinary General Meetings) and the trustees' voting instructions and major decisions taken at such meetings that could affect the investment.
vi. A PFC shall present to an approved trustee of a registered scheme, for purpose of performing its functions under the Ghanaian Act, an annual report which shall contain a copy of the audited profit and loss account and the balance sheet for the financial year of the PFC, together with a copy of the auditor's report on these documents, and the directors' report for that year.
vii. The PFC shall submit to the approved trustee of a registered scheme, an annual report relating to the scheme, at least two months before the deadline after each financial period.
viii. A PFC shall enter into a custodial agreement with approved trustees of a registered scheme in order to administer the scheme's assets, and the PFC shall comply with the terms of the relevant custodial agreement.
ix. An agreement entered into between the approved trustee of a registered scheme and a PFC of scheme assets may provide for scheme assets to be held in a central securities depository.
x. All forms of agreement and contracts entered between the trustees and the PFC shall be executed in Ghana.
xi. The contract shall provide that, subject to the provisions of the Ghanaian Act and the Regulations and any other Guidelines issued by the NPRA, such contract can be terminated where there are reasonable grounds for believing that either of the parties is not complying with, or is unlikely to comply with, the requirements of the contract or the Ghanaian Act or Regulations. The contract shall provide for other obligations of the parties at termination of the contract, including the payment of any outstanding fees and charges.

CONCLUSION

Based on the foregoing, it is apparent that the efficacy of the Nigerian pension administration relies heavily on PFCs as much as it does on PFAs. The role of PFCs in safeguarding retirement assets under the Act cannot be overemphasised. Arguably, the overall operations of the pension ecosystem can be improved where the processes between both the PFCs and PFAs are synchronized. This would assist in ensuring that issues like delays in payment of pensions and gratuities to deserving retirees, inefficiencies in the system, as well as the risk of mismanagement of pension funds, are either outrightly avoided or reduced to the barest minimum. Through their responsibilities in asset custody, investment, accounting. and reporting, PFCs ensure the protection and exponential growth of retirement savings assets. Little wonder therefore that some commentators have made a compelling case for the expansion of the powers and functions of PFCs. In subsequent publications, we will x-ray in some detail, the merits or otherwise of these calls for increased functions for PFCs.

Please do not treat the foregoing as legal advice as it only represents the public commentary views of the authors.