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A DECADE POST THE PENSION REFORM ACT 2014: ANY NEED FOR CHANGE?

Introduction

Nigeria's pension system has undergone significant transformations since its inception in 1951. Initially plagued with malpractices, budgetary issues, weak administration, and a lack of accountability, the system has evolved into a defined contribution scheme for both public and private sector employers and employees. In 2004, the Federal Government enacted the Pension Reform Act 2004 (**"PRA 2004"**), instituting the Defined Contributory Pension Scheme ("**CPS**") and establishing the National Pension Commission (**the "Commission"**) as the regulatory authority. Additionally, stakeholders such as Pension Fund Administrators ("**PFA**") and Pension Fund Custodians (**"PFC"**) were set up to enhance the transparency and efficiency of pension fund management, with specific functions ascribed to both PFAs and PFCs, thereby alleviating the hardship of retirees and bolstering confidence in the system.

A decade later, recognizing the need for further improvements, and realising that the PRA 2004 no longer adequately addressed the key challenges that the sector was confronted with, a new legislation was proposed and ultimately culminated in the enactment of the Pension Reform Act of 2014 (**"PRA 2014"**). The PRA 2014 established more stringent penalties for the violations of its provisions, expanded coverage of the CPS to include informal sector participation, and adjustments to the rate of pension contributions, as well as provisions for accessing benefits in the event of job loss. Despite these advancements, it was found that the vision achievement index by the Commission was below average after 14 years of operation. Issues of uncredited pension contributions, delays in the payment of pension benefits to retirees, non-compliance, and a lack of synergy between PFAs, PFCs, and the Commission persist, 10 years later. Therefore, questions remain about the efficacy of the current system and whether additional reforms are necessary to ensure its long-term sustainability and effectiveness.

In this article, we will address certain challenges faced by stakeholders under the present regime that perhaps call for additional reforms.

A. Rate of Employees' Pension Contribution

Section 4 (1) of the PRA 2014 increased the pension contribution rate from 15% to 18% of monthly emoluments, where 8% will be contributed by the employee and 10% by the employer. Under Section 4 (4) (b) of the PRA 2014, where an employer agrees to pay the full contribution, the minimum contribution is 20% of the employee's monthly emolument. This is commendable considering that it boosts the amount that accrues to employees' Retirement Savings Accounts (RSA). Nonetheless, while fortifying future retirement benefits, it overlooks the net income retained by employees after contributing 8%, remitting taxes and other lawful deductions in the light of inflation and reduction of purchasing power. Considering the rampant inflation and widespread non-compliance with the national minimum wage, reducing employees' contributions to a maximum of 5% of their monthly emoluments is necessary to cushion the financial burden placed on employees.[1] Meanwhile, the system can address the strain on employers by introducing additional incentives and reliefs for full compliance with pension contributions.

B. Penalties for Unremitted Pensions

An employer failing to deduct or remit contributions within the stipulated time under the PRA 2014 shall, in addition to the outstanding remittance, incur a penalty not less than 2% of the unremitted funds in accordance with the provisions of Section 11 (6) & (7) of the PRA 2014. Despite this extant punishment stipulated by the law and the Commission's efforts to penalize delinquent companies through recovery officers, a significant number of employers still default in remitting pensions deducted from employee emoluments[2], yet they do not face enforcement of the penalty against them. Therefore, besides offering incentives for timely remittance, it is imperative for the law to not only prescribe, but also enforce stricter penalties for defaulters, including the potential conviction of directors of defaulting companies to ensure compliance. This measure would compel employers to prioritize pension remittances, thereby preventing scenarios where retirees discover their pensions remain unpaid. In the same vein, the Commission has a crucial role to play in addressing the root causes of non-compliance. This could involve providing better education and support for employers regarding their pension obligations, streamlining administrative processes, and ensuring transparency in pension management.

C. Synergy Between Stakeholders

Since 2004, the custody and management of pension funds were assigned to two separate entities licensed by the Commission. The PFC is exclusively responsible for holding the pension assets in the RSA while the PFAs carry out investment and management functions. Furthermore, under Section 77(2) of the PRA 2014, a PFA is expressly prohibited from holding any pension fund or asset with a PFC with whom the PFA has any business interest, share, or any relationship whatsoever. This segregation particularly assists in ensuring checks and balances in the pension system. In practice, however, it has been found that relying on the provisions of Section 77(2) of the PRA

[1] https://www.linkedin.com/pulse/pension-reforms-nigeria-benefits-challenges-adedoyin-adebayo/
[2] https://businessday.ng/business-economy/article/employers-penalties-on-non-remittance-of-pensions-triple-in-q4/

2014, the Commission has often denied holders of PFCs licenses the approval to set up and operate a PFA within the same holding company (**"Holdco"**), and vice versa. It is our view that a different perspective, or perhaps a review of this provision of the PRA 2014, is worth considering to provide clarity for stakeholders. Allowing PFAs to keep pension funds or assets with a PFC with whom they have a business interest, share, or relationship, or at least permitting operators of a PFC to own a PFA within the same Holdco, could provide several benefits to the pension system. Firstly, it could foster closer collaboration and synergy between PFAs and PFCs, potentially leading to more efficient management of pension funds. Additionally, it could open opportunities for innovation and diversification in pension fund management, as PFAs may be able to leverage their existing relationships and expertise in certain sectors or markets through strategic partnerships with PFCs. Moreover, it could enhance transparency and accountability within the system by encouraging PFAs and PFCs to maintain robust governance structures and safeguards to mitigate conflicts of interest. Overall, revising this provision could be a positive step towards optimizing the performance and sustainability of Nigeria's pension system.

D. Flexibility of Investment Opportunities

Under the PRA 2014, a PFA is prohibited from investing pension funds or assets in shares or other securities issued by: (i) the PFA or its PFC; and (ii) a shareholder of the PFA or its PFC. The current position appears overly restrictive and lacking in flexibility, potentially hindering PFAs from optimizing investment opportunities for pension funds. The prohibition against investing in shares or securities issued by the PFA's own PFC or its shareholders limits diversification options and overlooks potential synergies or strategic partnerships that could benefit pension funds while maintaining appropriate safeguards. Rather than a blanket restriction of investment options, potentially leading to missed opportunities or reduced returns, it would be useful to outline flexible conditions under which such investment opportunities may be explored. A prerequisite of full disclosure to the Commission by the PFA of proposed investments of pension funds or assets in shares or other securities issued by the PFA, its PFC, or a shareholder of the PFA or its PFC will provide adequate transparency and accountability. Additionally, the Commission can play a major role in scrutinizing proposed investments and ensuring that no loopholes exist upon which conditional approvals or rejections may be granted where applicable. This approach would not only assist in striking a delicate balance between enabling strategic investment choices and safeguarding pension assets but also foster beneficiaries' long-term interests.

E. Enhanced Payment Processes

Another critical issue that pertains to the administration of pension benefits for retirees is the instances of delay and inefficiency in the payment process. Despite provisions for accessing benefits upon retirement, some retirees face bureaucratic hurdles, documentation challenges, and lengthy approval processes, leading to prolonged waiting periods before receiving their entitlements[3]. Such delays can cause financial strain and

[3] https://punchng.com/lagos-pensioners-battle-delays-to-earn-paltry-benefits/

uncertainty for retirees who rely on their pension benefits for sustenance. To address this gap, there is a need for enhanced efficiency and transparency in the pension benefit payment system. This could involve streamlining administrative procedures, implementing electronic payment systems to expedite disbursements, and establishing mechanisms for tracking the status of pension claims. Additionally, there should be adequate oversight and accountability measures to ensure that pension funds are disbursed promptly and accurately to eligible retirees. By addressing these gaps, the PRA 2014 can better fulfill its objectives of providing timely and reliable pension benefits to retirees, thereby enhancing the overall effectiveness of the pension system.

Conclusion

A decade post the enactment of the PRA 2014, it is evident that while significant progress has been made in reforming Nigeria's pension system, there remains room for improvement. Addressing existing limitations and adapting to evolving market dynamics are essential to ensure the sustainability and effectiveness of the pension framework. Therefore, policymakers should consider necessary revisions to the PRA 2014, with a focus on fostering collaboration and stakeholder engagement including retirees and employers, enhanced transparency, regular training, and capacity building of regulatory agencies. Addressing these aspects, policymakers will facilitate a more robust and resilient pension framework that meets the needs of current and future retirees.

For further information on the foregoing (none of which is a legal advice) or related matters, please generally contact us at info@ao2law.com, or specifically contact the key contacts.