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PENSION ALERT ? AUGUST 2014 - NEW PENSION REFORM ACT 2014 ? COMPLIANCE HIGHLIGHTS.

The Pension Reform Act, 2014 repealed the 2004 Pension Reform Act, No. 2 with the objective of improving the Uniform Contributory Pension Scheme, and the retirement benefits following thereof, for persons in the public and private sectors of the Nigerian economy. Persons in the Armed Forces, Intelligence and Secret Services continue to be exempted from this Contributory Pension Scheme.
It is now obligatory for employers in the private sector of the economy, with fifteen (15) or more employees, to register and make contributions to the Pension Contributory Scheme. Self-employed persons and employers with less than three (3) employees have the option to decide whether or not to join the Pension Contributory Scheme, in accordance with the Guidelines that the National Pension Commission may issue from time to time.

RATE OF PENSION CONTRIBUTIONS

The monthly rate of contributions to the Pension Contributory Scheme is now a minimum of ten per cent (10%) of each employee's monthly emolument to be contributed by the Employer, and a minimum of eight per cent (8%) of each employee's monthly emolument, to be contributed by the Employee.
Employers and employees are allowed to increase their pension contributions beyond the minimum rates prescribed under this Law. An employer can also elect to bear the entire monthly Pension Contribution, provided that such a contribution shall not be less than twenty per cent (20%) of the employee's total monthly emolument.
The penalty for not deducting and or remitting a Pension Contribution within seven (7) days of the payment of every employee's monthly emolument shall not be less than two per cent (2%) of the total contribution that remains unpaid or unremitted by the employer.

GROUP LIFE INSURANCE COVER

The 2014 Pension Reform Act reinstates the compulsory Group Life Insurance Cover - previously provided for under the repealed 2004 Pension Reform Act - by requiring all employers, already aliable to make compulsory monthly Pension Contribution(s), to also maintain a Group Life Insurance Policy in favour of each of their employees for a minimum of three (3) times the annual total emolument of the employee(s).

The premium for the Group Life Insurance Cover must be paid not later than the date of the commencement of the Insurance cover.

Where the death of an employee occurs with no Group Life Insurance Cover in place, the employer shall be directly and strictly liable to bear the death benefit claims of such a deceased employee's Estate.

TAX EXEMPTION.

Contributions to the Uniform Pension Contributory Scheme are tax exempted; i.e., they are tax deductible expenses in the computation of the tax payable by the Pension Contributor. Also, all interest, dividends, profits, investments, retirement benefits, etc, arising from and paid in accordance with the provisions of the 2014 Pension Reform Act or any other income accruable to Pension Funds and Assets, are also exempted from taxation.

PROTECTION OF PENSION FUNDS.

In addition to the express prohibition of Pension Fund Administrators ("PFA") retaining or dealing in Pension Assets, Pension Fund Administrators ("PFA") are required to maintain a statutory Contingency Reserve Fund to meet any claim that such a PFA may become liable for. Subject to such Guidelines as the National Pension Commission ("NPC") may issue, the Statutory Reserve Fund is required to be credited with 12.5% of the net profit after tax of each PFA.

Each PFA is also required to establish and maintain a Pension Protection Fund which Fund secures the benefits of eligible Pension Contributors under the 2014 Pension Reform Act.

Retirement Savings Account Holders, who have made their pension contributions for a number of years, shall be entitled to some minimum pension benefits as shall be specified in the Guidelines issued by NPC.

PENALTIES ? PENSION CONTRAVENTIONS.

Any person, who without a Licence, carries on business as a Pension Fund Administrator ("PFA") or as a Pension Fund Custodian ("PFC"), or whoever misappropriates or diverts Pension Funds, commits an offence and is liable on conviction to a fine of not less than N10Million (Ten Million Naira) for carrying on pension business without a licence; and a fine of an amount equal to three times the amount misappropriated in cases of Pension Funds and Assets misappropriated; or a term of imprisonment of not less than 10 (ten) years or to both the fine and the term of imprisonment.

Where the offence is committed by a corporate body, the fine must not be less than N50Million (Fifty Million Naira); with each Director and Officer of the offending corporation liable to a fine of N5Million (Five Million Naira) or to a term of ten (10) years or to both the fine and the term of imprisonment.

In addition to the fine and imprisonment, a Court of Law may order the forfeiture of the property, asset or proceeds of the pension contravention to the National Pension Commission ("NPC"). This is also in addition to the accrued interest attached to the proceeds of the unlawful pension activity and benefit.

PENSION DISPUTE RESOLUTION

As dispute is a part of human existence, a dissatisfied employee with a pension decision has the right to formally request the National Pension Commission to review a disputed decision. The National Pension Commission is required to ensure that it reaches a decision on any pension dispute without any delay.

Where the employee, the PFA or the employer is/are dissatisfied with a decision of the National Pension Commission, such dissatisfied party has the right to refer the dispute for resolution in accordance with the provisions of Arbitration and Conciliation Act, or to the National Industrial Court, whose decision shall be final and binding on the parties.

There is no Statute of Limitation to actions for the recovery of pension contributions, penalties and other benefits under the 2014 Pension Reform Act.

OBSERVATIONS

Increments in the rate of pension contributions by compliant employers will only further increase the cost of doing business and discourage new employment. This is especially as the level of compliance and enforcement with the provisions of the repealed 2004 Pension Reform Act was very, very dismal.

Also, there is a lacuna as to whether employers with more than three (3), but less than fifteen (15) employees, are mandatorily required to comply with the provisions of the Pension Reform Act, 2014. It is hoped that the NPC Guidelines when released, will provide some direction in this area.

The confidentiality provisions in this new Pension Law are reminiscent of draconian military decrees. These confidentiality provisions are also likely to conflict with the provisions of the 1999 Constitution (as amended) and the Freedom of Information Act.

Due to the average life expectancy in Nigeria being less than 55 years, commentators have seriously questioned the propriety of the retirement age of 60 years, as provided for in the Pension Reform Act, 2014. This is especially as the principal beneficiary of the Pension Scheme is the employee and not the employee's estate on the employee's demise

There are no protective whistle-blowers provisions in this legislation. In a country with a very high unemployment rate, many employers may continue to breach the provisions of the mandatory contributory pension scheme thereby inhibiting the ability of the scheme to be self-sustaining.