The New Pension Reform Bill – What you need to know

In brief

On 8 April 2014, the Senate passed the Pension Reform Bill which seeks to replace the Pension Reform Act 2004. The Bill is yet to cross a further legislative hurdle and the Presidential assent required to become law.

Several changes will be introduced if passed into law such as the imposition of a 10-year jail term for persons found guilty of misappropriating pension funds, the creation of a Pension Protection Fund, inclusion of more private sector employers, increase in the minimum contribution into the Scheme and the imposition of fines and penalties on Pension Fund Administrators (PFA) for failing to meet their obligations to the pension contributors and for failing to comply with the provisions of the Act.

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

In detail

The Pension Reform Bill (Bill) has been passed by the Senate. If passed by the House of Representatives and upon assent by the President of the Federal Republic of Nigeria, it would repeal the Pension Reform Act 2004. With this development, it is wise for employers to start preparing for the possible impact the Bill may have on their staff cost and implications for the employees in terms of their take home pay.

Scope of the Act

The Bill contains 18 new sections and one of these is the inclusion of smaller private sector employers within the scope of those who are required to participate in the scheme. A private sector company shall be subject to the scheme where it has 3 or more employees. Under the 2004 Act, the minimum threshold is 5 employees.

Contribution to the Scheme

Under the Bill, an employer is expected to contribute a minimum of 12% of the employee's monthly emoluments while the employee is expected to contribute not less than 8% of his/her monthly emoluments. Under the 2004 Act, the minimum contribution expected to be made by both parties is 15% (usually 7.5% each). Although this will increase contributions to the fund, it will also increase cost for employers (especially small and micro entities) that predominantly operate in the informal sector. This may lead to unavoidable non compliance by most employers in this category. Likely reaction could be to formally disengage a few staff to bring the number below the threshold or restructure staff pay to maintain the same level of costs.

Investments

The Bill expands the scope in which the pension funds can be invested. Specialist investment funds such as infrastructure development, manufacturing sectors, petrochemical industry, electricity generation and distribution, telecoms, solid minerals and agriculture are now included as sectors in which the pension funds can be invested.

Offences and Penalties

The Bill criminalises the misappropriation of pension funds by any 'person or body'.

Under the current PRA misappropriation of funds by only the PFA or Pension Fund Custodian (PFC) is criminalised. This has been extended to persons or bodies other than the PFAs and PFCs (including Directors, managers, secretaries etc). 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 Bill in his/her possession, custody or control.

The Bill also criminalises any reimbursement or payment by a PFA or 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 in 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 National Pension Commission ("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 PRA, this is not specifically an offence, however the PenCom has powers to remove a Director for breach of these obligations.

Under the Bill, jurisdiction is vested in a Court of 'competent jurisdiction' which may also include the State High Courts and the National Industrial Court.

The court may lift the veil of incorporation and action taken against the shareholders of the PFAs and PFCs if considered necessary.

Pension Protection Fund

A pension protection fund is created under the Bill 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), income from investments of the Pension Protection Fund and all penalties and fines collected under the Bill.

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 Bill 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.

Appointment of the Director – General (DG)

Under the Bill, 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 PRA, 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 the Scheme

In addition to the exempted persons under the PRA, the Bill exempts professors covered by the Universities (Miscellaneous Provisions) Amendment Act 2012.

Exemption from tax

In clarifying the spirit of the PRA, the Bill 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 Bill, if passed into law would prevent the institution of an action against an officer or employee of PenCom for any act done in execution of the Bill 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)

Although the Bill reiterates the provisions of the PRA with respect to the transfer of money held by the NSITF to the Scheme, it does not include a timeline or penalties for failure to do so. Some public reports estimate that over N67 billion from the NSITF is yet to be transferred since 2007.

Dispute resolution

A person aggrieved with a decision taken by an 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 2004 PRA, 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 would give more contributors confidence in the scheme.

Employees may find some satisfaction in the fact that employers would contribute at least 12% 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.

The reduction in the minimum number of employees required to make an employer liable may be counter-productive as many of the smaller businesses especially in the black economy may find unconventional ways out or simply refuse to comply. A general provision in the Bill imposes penalties when an employer is in breach of his obligations under the Act. The penalty is N250,000 or a term of not less than 1 year imprisonment or both.

If the Bill is passed into law, mobilisation of the funds to the additional sectors will serve to create more positive impact for the economy at large. However, other measures and guidelines will be required to stimulate investment to these sectors as the low risk, high yield bonds may continue to be more attractive for PFAs rather than other specialised investment funds.

Let's talk

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