AUSTEN-PETERS & Co.

Business Law Digest

June 2015 ISSN 0795 -1124

PENSION REFORM ACT 2014: A Welcome Improvement..?

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A pension plan is a financial safety net for retirement and old age. It is a way of ensuring the financial security of an employee upon retirement. Bearing in mind that the average retiree would have made pension contributions for at least twenty (20) years, an efficient pension system and the concomitant protection of pension funds should be a fundamental human right.

In 2004, the Pension Reform Act (PRA 2004) was enacted to address the inadequacies that plagued the Defined Benefit System, which was being run hitherto. This legislation introduced the Contributory Pension Scheme (CPS), which provided for mandatory equal level of contributions by both the employer and the employee into the employee's Retirement Savings Account, managed by a Pension Fund Administrator (PFA), for the benefit of the employee.

PRA 2004 recorded considerable successes in the ten (10) years of its existence, such as its implementation by the National Pension Commission (PENCOM) and the level of compliance achieved, as evidenced in the value of the national pension fund assets, which stands at about N4,000,000,000,000.00 (Four Trillion Naira). The transparency and accountability introduced into the pension industry by the PRA 2004, evidenced by the reduced incidence of pension fund theft.

As with most legislation, the implementation and enforcement of PRA 2004 raised a number of issues that necessitated its amendment in 2014. This article attempts to appraise some key amendments made in PRA 2014.

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Section 11(5) goes further to mandate the employer to request a PFA to open a nominal RSA for an employee who fails to open an RSA within six (6) months of employment. These provisions point to the increased responsibility of an employer for the welfare of its employee.

Pensioners' Access to RSA Funds

The combined effect of Sections 3 and 4 of PRA 2004 was that access to the RSA by the holder of the account was only permitted upon retirement or the attainment of the age of 50, with exceptions given to those retired due to medical conditions or permanent disability.

However, Section 7(2) of PRA 2014 provides that the holder of an RSA, who voluntarily retires, disengages, or is disengaged from employment, and fails to secure another employment within four (4) months, , shall be entitled to access a maximum of 25% of the total amount credited to his RSA with the approval of PENCOM. While this amendment may have been influenced by popular demand, it has been viewed to be antithetical to one of the core objectives of the pension reform - to assist improvident individuals by ensuring they save in order to cater for their livelihood in old age. , An employee's RSA should not be an alternative to unemployment benefits.

The intent of PRA 2014 in this regard is admirable. However, one hopes that PRA 2014 has not bitten more than it can chew; likewise, that the

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RSAs can be saved from this responsibility by the implementation of a Federal Government unemployment benefit scheme.

Increase in the Scope of the CPS

Section 2 of PRA 2014 increases the scope of eligible participants under the CPS to include other civil servants, organisations with less than three employees, and self-employed persons (in accordance with the guidelines issued by PENCOM).

Widening the scope of coverage of the CPS closes the gap that existed between the retirement welfare of public servants of the Federal Government (the only group of public servants covered in PRA 2004) and that of the State and Local Governments. It also increases the size of pension fund assets, due to a larger number of contributors.

Increased Level of Contributions

Section 4 of PRA 2014 increases the minimum contribution from 15% of employees' monthly emoluments (7.5% equal contributions from both employer and employee) to 18%, with the employer and employee bound to contribute at least 10% and the employee 8% respectively. This means that employees will have more funds in their Retirement Savings Accounts (RSA) upon retirement.

Section 89 (2) of PRA 2014 provides that an RSA holder can access a percentage of the sum credited to his RSA to fund the equity contribution for payment of his residential mortgage. This is another welcome development, bearing in mind the recent level of activity in the mortgage and real estate sectors. However, a proper assessment of this amendment is only possible when PENCOM releases appropriate guidelines. This amendment has not suffered the same critique as the foregoing mainly because home ownership is an investment, which contributes to the overall welfare of a retiree.

Enforcement and Compliance

Enforcement and compliance are key themes of PRA 2014, which increases penalties by increasing both the imprisonment terms and the capital value of fines for misconduct, and expressly empowers PENCOM, as a regulator. If PRA 2004 gave PENCOM a bark, PRA 2014 gives it the bite.

Another interesting innovation under this theme is the personalisation of penalties. PRA 2014 makes the senior management staff of PFAs and Pension Fund Custodians (Operators) personally liable for the offences or misconduct of their companies, as opposed to the PRA 2004, where the Operators, as corporate bodies, were penalised for misconduct mostly through fines. Sections 76 (2) and 95 (3) provide for the suspension and removal of senior management staff of Operators who have been found guilty of flouting the provisions of the PRA 2014 or any of the guidelines issued by PENCOM.

Section 98 of PRA 2014 empowers PENCOM to intervene in the management of Operators under certain circumstances, one of which is where an Operator violates any provision of PRA 2014, including guidelines issued by PENCOM. However, it is important to note that other circumstances that may lead to "PENCOM intervention" as outlined in Section 98 (1) of PRA 2014 include where an Operator is insolvent, fails to adhere to proper corporate governance standards, or informs PENCOM that it is unlikely to meet its obligations under PRA 2014. The most important objective of any pension system is the safety of pension assets. Therefore, whenever pension assets are threatened, it is imperative that the regulator (in this case – PENCOM) be empowered to step in immediately and seamlessly.

Section 79 (3) also empowers PENCOM to disengage, or direct the disengagement or suspension of the Managing Director, Directors or other senior management staff of Operators, who have grossly disregarded the provisions of PRA 2014. This is another example of the personalisation of penalties by PRA 2014 and goes a long way to ensure that personnel of the Operators do not hide behind corporate personality to absolve themselves of any personal liability. Moreover, corporate responsibility is likely to result in fines, which to the Operator, could be infinitesimal.

In line with this theme of enforcement, PRA 2014 has broadened the scope of the jurisdiction for prosecution of offences by providing for "a court of competent jurisdiction", which now includes State High Courts and the National Industrial Court.

This is a deliberate amendment to the provision of PRA 2004, which granted the Federal High Court exclusive jurisdiction for the prosecution of offences under it. The general criticism of this amendment is the probable encouragement of abuse of court process by the filing of mischievous and frivolous suits at several courts, which all now have concurrent jurisdictions on pension matters.

Pension Protection Fund

Section 82 of PRA 2014 establishes the Pension Protection Fund (PPF). The PPF is effectively a failsafe in the event that RSAs suffer any shortfall because of the crystallisation of any risk attached to the financial investment to which the PFA has committed their pension funds.

PRA 2004 was enacted at a time when it could not have envisioned the capital market crisis of 2008/2009. Though it is impossible to separate risks from investment, PRA 2014 has done well by creating a buffer to cushion the blow of any loss that may occur in the course of a PFA's investment of pension assets. PENCOM has the responsibility of ensuring that pension assets are invested safely, whilst recognising that investments must be made in assets that yield returns (which will require a degree of risk). The creation of the PPF is a laudable attempt at a solution by providing adequate protection to accommodate reasonable risks.

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Conclusion

The major criticism of PRA 2014 seems to be the alleged excessive empowerment of PENCOM. However, when one considers the critical role that the pension industry now plays, in terms of the economic and social welfare of the country, as well as the sensitive nature of pension assets, it becomes clear that it is critical to have an adequately equipped regulator.

Lapses identified in the course of the implementation of the PRA 2014 will require amendment as the years go by. However, from the foregoing, which is not exhaustive by any means, the PRA 2014 has delivered on being an improvement on the PRA 2004.

Editor's Note

The Central Bank of Nigeria (CBN) has recently made some policies to shore up the Nigerian Naira. The latest policy, derisively dubbed "Toothpick Alert," restricts the wanton importation of sundry goods and services available locally, hoping the ban will ease the pull on foreign reserves and encourage the patronage of local producers. CBN also made a policy pegging cash or wired transfers for some goods and services to $5,000.00 per transaction. The latest directive relates to the strict enforcement of the reporting obligation to the Nigerian Customs Service of the transportation of cash or negotiable instruments in excess of US$10,000.00.

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