

PENSION REFORM ACT

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An Act to establish a Contributory Pension Scheme for employees in the Public Service of the Federation, Federal Capital Territory and Private Sectors in the Federal Republic of Nigeria.

[2004 No. 2.]

[25th June, 2004]

[Commencement.]

PART I

Establishment and Objectives of Contributory Pension Scheme/or Employees in the Public and Private Sectors

1. Establishment of a Contributory Pension Scheme for employees in the Public and Private Sectors

(1) There shall be established for any employment in the Federal Republic of Nigeria, a Contributory Pension Scheme (in this Act referred to as "the Scheme") for payment of retirement benefits of employees to whom the Scheme applies under this Act.

(2) Subject to section 8 of this Act, the Scheme shall apply to all employees in the Public Service of the Federation, Federal Capital Territory and the Private Sector-

- (a) in the case of the Public Sector, who are in employment; and
- (b) in the case of the Private Sector, who are in employment in an organisation in which there are five or more employees.

2. Objectives of the Scheme

The objectives of the Scheme shall be to-

- (a) ensure that every person who worked in either the Public Service of the Federation, Federal Capital Territory or Private Sector receives his retirement benefits as and when due;
- (b) assist improvident individuals by ensuring that they save in order to cater for their livelihood during old age; and
- (c) establish a uniform set of rules, regulations and standards for the administration and payments of retirement benefits for the Public Service of the Federation, Federal Capital Territory and the Private Sector.

3. Withdrawal from retirement savings account

- (1) Subject to section 3 (2) as from the commencement of this Act, no person shall be entitled to make any withdrawal from his retirement savings account, opened under section 11 of this Act, before attaining the age of 50 years.

(2) Notwithstanding the provisions of subsection (1) of this section, any employee who--

- (a) is retired on the advice of a suitably qualified physician or a properly constituted medical board certifying that the employee is no longer mentally or physically capable of carrying out the functions of his office;
- (b) is retired due to his total or permanent disability either of mind or body; or
- (c) retires before the age of 50 years in accordance with the terms and conditions of his employment,

shall be entitled to make withdrawals in accordance with section 4 of this Act.

(3) The Medical Board or suitably qualified physician under subsection (2) of this section may, at the request of the employee be made once in every two years, review the fitness of the employee and where the medical board certifies that he is now mentally and physically capable of carrying out the functions of his office, he may re-enter the scheme upon securing another employment.

(4) For purpose of subsection (1) of this section, the authentic age of an employee entering the public service or any other employment shall be that submitted by him on entering the service or taking up the employment.

4. Retirements benefits

(1) A holder of a retirement savings account upon retirement or attaining the age of 50 years, whichever is later, shall utilise the balance standing to the credit of his retirement savings account for the following benefits-

- (a) programmed monthly or quarterly withdrawals calculated on the basis of an expected life span;
- (b) annuity for life purchased from a life insurance company licensed by the National Insurance Commission with monthly or quarterly payments; and
- (c) a lump sum from the balance standing to the credit of his retirement savings account:

Provided that the amount left after that lump sum withdrawal shall be sufficient to procure an annuity or fund programmed withdrawals that will produce an amount not less than 50 percent of his annual remuneration as at the date of his retirement.

(2) Where an employee retires under paragraph (c) of subsection (2) of section 3 of this Act the employee may, on request, withdraw a lump sum of money not more than 25% of the amount standing to the credit of the retirement savings account; provided that such withdrawals shall only be made after six months of such retirement and the retired employee does not secure another employment.

5. Death of an employee

(1) Where an employee dies, his entitlements under the life insurance policy maintained under subsection (3) of section 9 of this Act shall be paid to his retirement savings account.

(2) The pension fund administrator shall apply the amount paid under subsection (1) of this section in accordance with section 4 of this Act in favour of the beneficiary under

a will or the spouse and children of the deceased or in the absence of a wife and child, to the recorded next-of-kin or any person designated by him during his lifetime or in the absence of such designation, to any person appointed by the Probate Registry as the administrator of the estate of the deceased.

6. Missing employees

(1) Notwithstanding anything to the contrary contained in any other law, where an employee is missing and is not found within a period of one year from the date he was declared missing, and a board of inquiry set up by the Commission concludes that it is reasonable to presume that he has died, the provisions of section 5 of this Act shall apply.

(2) Where it is confirmed or presumed that the employee is dead, the provision of section 5 of this Act shall apply.

7. Retirement benefits to be exempted from tax

(1) Any amount payable as a retirement benefit under this Act shall not be taxable.

(2) Notwithstanding the provisions of subsection (1) of this section, any voluntary contribution made under subsection (5) of section 9 of this Act shall be subject to tax at the point of withdrawal where the withdrawal is made before the end of five years from the date the voluntary contribution was made.

8. Exemption from the Scheme

(1) Notwithstanding the provisions of subsection (2) of section I of this Act, any employee who at the commencement of this Act is entitled to retirement benefits under any pension scheme existing before the commencement of this Act but has three or less years to retire, shall be exempted from the scheme.

(2) The categories of person mentioned in section 291 of the Constitution of the Federal Republic of Nigeria, 1999 shall be exempted from the scheme.

(3) Any person who falls within the provisions of subsections (1) and (2) of this section shall continue to derive retirement benefit under such existing pension scheme as provided for in the First Schedule to this Act.

[First Schedule.]

(4) Nothing in this Act shall preclude the right of any person mentioned in subsections (1) and (2) of this Act to be paid his pension as and when due.

9. Rate of contribution to the Scheme

(1) Subject to the approval of the Commission established under section 14 of this Act, the contribution for any employee to which this Act applies shall be made in the following circumstances relating to his monthly emoluments-

(a) in the case of the Public Service of the Federation and Federal Capital Territory-

- (i) a minimum of seven and a half percent by the employer;
- (ii) a minimum of seven and a half percent by the employee; or

(b) in the case of the Military-

- (i) a minimum of twelve and a half percent by the employer;
- (ii) a minimum of two and a half percent by the employee;

(c) in other cases-

- (i) a minimum of seven and a half percent by the employer; and
- (ii) a minimum of seven and a half percent by the employee.

(2) Notwithstanding the foregoing, an employer may agree or elect to bear the full burden of the Scheme, provided that in such a case the employer's contribution shall not be less than 15% of the monthly emoluments of the employee.

(3) In addition to the rates specified in subsection (1) of this section, employers shall maintain a life insurance policy in favour of the employee for a minimum of three times the annual total emolument of the employee.

(4) Subject to such guidelines as may be issued from time to time by the Commission, any person who is not ordinarily covered under section I of this Act or any person exempted under subsection (1) of section 8 of this Act shall be entitled to make voluntary contributions under the Scheme.

(5) Any employee to which this Act applies may, in addition to the total contributions being made by him and his employer, make voluntary contributions to his retirement savings account.

(6) The rates of contribution mentioned in subsection (1) of this section may, upon agreement between any employer and employee, be revised upwards, from time to time, and the Commission shall be notified of such revision.

10. Contribution under the Scheme to form part of tax deductible expenses

Notwithstanding anything in any enactment or law, contributions by an employee to the Scheme under this Act shall form part of tax-deductible expenses in the computation of tax payable by an employer or employee under the relevant income tax law.

11. Retirement savings account and remittance of contributions, etc.

(1) Every employee shall maintain an account, (in this Act referred to as "retirement savings account") in his name with any pension fund administrator of his choice.

(2) The employee may, not more than once in a year, transfer the retirement savings account maintained under subsection (1) of this section from one pension fund administrator to another without adducing any reason for such transfer.

(3) The employee shall notify his employer of the pension fund administrator chosen and the identity of the retirement savings account opened under subsection (1) of this section.

(4) The employee shall not have access to his retirement savings account nor have any dealing with the custodian with respect to the retirement savings account except through the pension fund administrator.

(5) The employer shall-

- (a) deduct at source, the monthly contribution of the employee in his employment; and
- (b) not later than seven working days from the day the employee is paid his salary, remit an amount comprising the employee's contribution under paragraph (a) of this subsection and the employer's contribution to the custodian specified by the pension fund administrator of the employee to the exclusive order of such pension fund administrator.

(6) Upon receipt of the contributions remitted under subsection (5) (b) of this section, the custodian shall notify the pension fund administrator who shall cause to be credited the retirement savings account of the employee for whom the employer had made the payment.

(7) Any employer who fails to remit the contributions within the time prescribed in subsection (5) (b) of this section shall, in addition to making the remittance already due, be liable to a penalty to be stipulated by the Commission provided that the penalty shall not be less than two percent of the total contribution that remains unpaid for each month or part of each month the default continues and the amount of the penalty shall be recoverable as a debt owing to the employees retirement savings account as the case may be.

(8) Government contribution to the pension of employees of the Public Service of the Federation and Federal Capital Territory shall be a charge on the Consolidated Revenue Fund of the Federation.

(9) The Accountant-General of the Federation shall, at the request of the Commission, effect the deductions mentioned in subsection (8) of this section.

12. Transfer of entitlement from defined benefits scheme into the Scheme

(1) As from the commencement of this Act, the right to retirement benefits of any employee who is already under any pension scheme existing before the commencement of this Act and has over three years to retire shall-

- (a) in the case of employees of Public Service of the Federation and Federal Capital Territory where the scheme is unfunded, be recognised in the form of an amount acknowledged through the issuance of a bond to be known as Federal Government Retirement Bonds, respectively, in favour of the employees and the bond issued under this subsection shall be redeemed upon retirement of the employee in accordance with section 29 of this Act and the amount so redeemed shall be added to the retirement savings account of the employee and applied in accordance with the provisions of section 4 of this Act; and
- (b) in the case of the employees of the Public Service of the Federation, Federal Capital Territory and in the private sector, credit the retirement savings accounts of the employees with any funds to which each employee is entitled and in the event of an insufficiency of funds to meet this liability the shortfall shall immediately become a debt of the relevant employer and be treated with the same priority as salaries owed; where there is such a debt the employer shall immediately issue a written acknowledgment of the debt to the relevant employee and take steps to meet the shortfall.

(2) The employer shall notify the Commissioner of any written acknowledgment that arises under paragraph (b) of subsection (1) of this section and any steps taken or planned to meet the shortfall.

13. Transfer from one employment to another

Where an employee transfers his service or employment from one employer or organisation to another, the same retirement savings account shall continue to be maintained by the employee.

PART II

Establishment and Composition of the National Pension Commission, etc.

14. Establishment of the National Pension Commission, etc.

(1) There is established a body to be known as the National Pension Commission (in this Act referred to as "the Commission").

- (2) The Commission-
- (3) The Commission may acquire, hold or dispose of any moveable or immovable property for the purpose of its function under this Act.

15. Object of the Commission

The principal object of the Commission shall be to regulate, supervise and ensure the effective administration of pension matters in Nigeria.

16. Membership of the Commission

- (1) The Commission shall consist of-
 - (a) a part-time chairman who shall possess a university degree or its equivalence with not less than 20 years experience;
 - (b) a Director-General who shall -
 - (i) be the Chief Executive Officer responsible for the day-to-day administration of the Commission;
 - (ii) possess professional skill and with not less than 20 years cognate experience relating to pension matters and or Insurance, Actuarial Science or other related field;
 - (iii) be a fit and proper person;
 - (a) shall be a body corporate with perpetual succession and a common seal; and
 - (b) may sue and be sued in its corporate name.
- (c) four full-time Commissioners who shall each-
 - (i) possess professional and cognate experience in Finance and Investment, or Accounting or Pension Management or Actuarial Science or Business Administration or other related field;
 - (ii) be fit and proper persons;

- (d) part-time members of the Commission who shall be representatives each of-
- (i) the Head of the Civil Service of the Federation;
 - (ii) the Federal Ministry of Finance;
 - (iii) the Nigeria Labour Congress;
 - (iv) the Nigeria Union of Pensioners;
 - (v) the Nigeria Employers Consultative Association;
 - (vi) the Central Bank of Nigeria; and
 - (vii) the Securities and Exchange Commission.

(2) There shall be four specialised departments of the Commission namely-

- (a) Technical;
- (b) Administration;
- (c) Inspectorate; and
- (d) Finance and Investment to be headed by four Commissioners.

(3) The Chairman, the Director-General and other members of the Commission other than *ex officio* members shall be appointed by the President, one each from the six geo-political zones of Nigeria subject to the confirmation of the Senate.

(4) The Commission Secretary and Legal Adviser shall be appointed by the Commission and his terms of employment shall be as stipulated by the Commission.

(5) The supplementary provisions set out in the Schedule to this Act shall have effect with respect to the proceedings of the Commission and the other matters mentioned therein.

[Second Schedule.]

17. Tenure of office

(1) The Chairman, the Director-General and the Commissioners shall hold office for a term of four years and may be re-appointed for a further term of four years.

(2) In the event of a vacancy, the President shall appoint a new member from the appropriate zone to complete the tenure of his successor.

18. Cessation of membership

Notwithstanding the provisions of section 17 of this Act, a member of the Commission shall cease to hold office as a member of the Commission if-

- (a) he resigns his appointment as a member of the Commission by a notice, under his hand, addressed to the President;
- (b) he becomes of unsound mind;
- (c) he becomes bankrupt or makes a compromise with his creditors;
- (d) he is convicted of a felony or of any offence involving dishonesty corruption;
- (e) he becomes incapable of carrying on the functions of his office either arising from an infirmity of mind or body; or
- (f) the President is satisfied that it is not in the interest of the Commission or in the interest of the public for the person to continue in office and notifies the member in writing to that effect.

19. Emoluments, etc.

The Chairman, Director-General and Commissioners of the Commission shall be paid such emoluments, allowances and incidental expenses as may be determined by the appropriate Agency of the Federal Government of Nigeria, from time to time.

PART III

Functions and Powers of the Commission

20. Functions of the Commission

The Commission shall-

- (a) regulate and supervise the Scheme established under this Act;

- (b) issue guidelines for the investment of pension funds;
- (c) approve, licence, regulate and supervise pension fund administrators, custodians and other institutions relating to pension matters as the Commission may, from time to time, determine;
- (d) establish standards, rules and guidelines for the management of the pension funds under this Act;
- (e) ensure the maintenance of a National Data Bank on all pension matters;
- (f) carry out public awareness and education on the establishment and management of the Scheme;
- (g) promote capacity building and institutional strengthening of pension fund administrators and custodians;
- (h) receive and investigate complaints of impropriety leveled against any pension fund administrator, custodian or employer or any of their staff or agent; and
- (i) perform such other duties which, in the opinion of the Commission, are necessary or expedient for the discharge of its functions under this Act.

21. Powers of the Commission

The Commission shall have the power to--

- (a) formulate, direct and oversee the overall policy on pension matters in Nigeria;
- (b) fix the terms and conditions of service including remuneration of the employees of the Commission;
- (c) request or call for information from any employer or pension administrator or custodian or any other person or institution on matters relating to retirement benefit;
 - (d) charge and collect such fees, levy or penalties, as may be specified by the Commission;

- (e) establish and acquire offices and other premises for the use of the Commission in such locations as it may deem necessary for the proper performance of its functions under this Act;
- (f) establish standards, rules and regulations for the management of the pension funds under this Act;
- (g) investigate any pension fund administrator, custodian or other party involved in the management of pension funds;
- (h) impose administrative sanctions or fines on erring employers or pension fund administrators or custodians;
- (i) order the transfer of management or custody of all pension funds or assets being managed by a pension fund administrator or held by a custodian whose licence has been revoked under this Act or subject to insolvency proceedings to another pension fund administrator or custodian, as the case may be; and
- (f) do such other things which in its opinion are necessary to ensure the efficient performance of the functions of the Commission under this Act.

PART IV

Staff of the Commission

22. Secretary and other staff of the Commission, etc.

- (1) There shall be for the Commission, a Secretary and Legal Adviser who shall-
 - (a) be appointed by the Commission;
 - (b) be responsible to the Director-General and the Commission;
 - (c) possess professional skills and cognate experience;
 - (d) be responsible for-
 - (i) taking the minutes of meetings of the Commission;
 - (ii) keeping records and conducting the correspondence of the Commission;
 - (iii) issuing notices for the meetings of the Commission;
 - (e) be in charge of the Legal department; and
 - (f) perform such other duties as may be assigned to him, from time to time, by the Commission or the Director-General.
- (2) The Commission may, from time to time, appoint such other category of employees as may appear to it expedient and necessary for the proper and efficient performance of its functions under this Act.
- (3) The Commission shall pay its employees such remuneration, allowances and other benefits as may be determined by the Commission, from time to time.
- (4) The Commission may make rules relating generally to the conditions of service of employees of the Commission, and without prejudice to the generality of the foregoing, the rules may provide for the appointment, promotion and disciplinary control of all employees of the Commission.

PART V

Financial Provisions

23. Funds of the Commission

- (1) The Commission shall establish and maintain a fund from which all its expenses will be defrayed.
- (2) The fund established under subsection (1) of this section shall consist of-
 - (a) the initial take-off grant from the Federal Government;
 - (b) annual subvention from the Federal Government;
 - (c) fees, tines and commissions charged by the Commission;
 - (d) income from any investments of the Commission; and
 - (e) all sums of money or income accruing to the Commission by way of testamen-

tary dispositions and endowments.

24. Estimates

The Commission shall cause to be prepared, not later than the thirtieth day of September in each year, an estimate of its income and of expenditure for the succeeding year.

25. Accounts and Audit

The Commission shall cause to be kept proper accounts and records in relation thereto, such account shall, not later than four months after the end of each year, be audited by auditors appointed by the Commission from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

26. Annual report, etc.

(1) The Commission shall not later than six months after the end of each year, submit to the President and the Public Account Committee of the National Assembly, a report on the activities and administration of the Commission during the immediately preceding year and shall include in such report the audited accounts of the Commission and the auditors report thereon.

(2) Without prejudice to subsection (1) of this section, the Commission may submit such other reports to the President on matters of expediency or urgency relating to its functions under this Act as the Commission may, from time to time, determine.

(3) The Commission shall not later than six months after the end of each year publish the annual reports prepared under subsection (1) of this section in at least three national newspapers circulating in Nigeria.

27. Power to accept gift

(1) The Commission may accept gifts of land, money or other property or things upon such terms and conditions, if any, as may be specified by the person or organisation making the gift.

(2) The Commission shall not accept any gift if the conditions attached by the person or organisation making the gift are inconsistent with the aims and objectives of the Commission under this Act.

28. Power to borrow

The Commission may, with the approval of the President, borrow money by way of overdraft or loan for the purpose of carrying out its functions under this Act.

PART VI

Transitional Provisions

Establishment of, etc., Transitional provisions for the Public Sector

29. Retirement Benefits Bond Redemption Funds

(1) The Central Bank of Nigeria shall establish, invest and manage funds to be known as the Retirement Benefits Bond Redemption Funds (in this Act referred to as "the Redemption Funds") in respect of the Federal Public Service and Federal Capital Territory.

(2) The Federal Government shall pay into the Redemption Funds an amount equal to five per cent of the total monthly wage bill payable to employees in the public service of the Federation and Federal Capital Territory.

(3) The amount in the Redemption Funds shall be used by the Central Bank of Nigeria to redeem any retirement benefit bonds issued pursuant to section 12 (1) of this Act.

(4) Payments into the Redemption Fund shall cease after all the retirement benefit bonds issued under section 12 of this Act have been redeemed.

30. Establishment of Pension Department

(1) There is established for the Public Service of the Federation and Federal Capital Territory, Pension Departments to be known respectively as the Pension Transitional Arrangement Department (in this Act referred to as "the Department").

(2) The Department shall be made up of the existing pension boards or offices in the Public Service of the Federation and Federal Capital Territory, which shall consist of the

following departments-

- (a) in the case of the Federal Government, be the existing pension boards or offices in the public service of the Federation which shall consist of the following departments, that is-
 - (i) the Civil Service Pension Department;
 - (ii) the Military Pension Department;
 - (iii) the Police Pension Department;
 - (iv) the Customs, Immigration and Prisons Pension Department;
 - (v) the Security Agencies Pension Department;
- (b) in the case of the Federal Capital Territory, Abuja be located in the office of the Minister of the Federal Capital Territory, Abuja.

(3) The Pension Transitional Arrangement Departments shall on a monthly basis render returns of the comprehensive list of pensionable staff, pensioners, deceased pensioners and their next-of-kin to the Commission.

(4) These departments shall operate under the rules, regulations and directives made by the Commission, from time to time.

31. Composition of the Department

- (1) The Department shall consist of-
 - (a) the existing pension boards or offices in the public service of the Federation and Federal Capital Territory shall consist of such members as is currently composed, and such other staff as may be posted to it;
 - (b) in the case of the Federal Capital Territory, Abuja a Federal Capital Territory Pension Department which shall consist of-
 - (i) an officer not below the rank of a Director representing the Minister of the Federal Capital Territory;
 - (ii) a representative of the Department of Finance of the Ministry of the Federal Capital Territory not below the rank of Assistant Director as member;
 - (iii) a representative of the civil service union of the Federal Capital Territory as member;
 - (iv) a representative of the pensioners as member;
 - (v) one person to be appointed from the public service of the Federal Capital Territory, Abuja.

(2) The Department shall-

- (a) in the case of the Federal Government, be as presently constituted; and
- (b) in the case of the Federal Capital Territory, Abuja, be constituted by the Minister of the Federal Capital Territory.

(3) Other categories of staff may be posted from the Public Service of the Federation and Federal Capital Territory for the purpose of discharging its functions.

32. Functions of the Department

The Department shall-

- (a) carry out the existing functions of the relevant pension boards or offices in the Public Service of the Federation and Federal Capital Territory and shall in particular-
 - (i) make budgetary estimates for existing pensioners and the officers exempted from this Scheme under section 8 of this Act;
 - (ii) receive budgetary allocations from the Government and make payments to pensioners as and when due; and

- (iii) ascertain deficits in pension payments, if any, to existing pensioners or the categories of officers exempted under section 8 of this Act; and carry out such other functions aimed at ensuring the welfare of pensioners as the Commission may, from time to time, direct.

33. Payment of pension to existing pensioners and the exempt officers

The Department shall pay gratuity and pension to the existing pensioners and the category of officers exempted under section 8 of this Act, in accordance with the relevant and applicable computations under the existing pay-as-you-go pension scheme of the Public Service of the Federation and Federal Capital Territory.

34. Funds and assets of existing pension office, etc.

As from the commencement of this Act, the responsibilities, funds, assets or liabilities of all existing pension offices in the Public Service of the Federation shall be vested in the department as provided under this Act.

35. The Department to be supervised by the Commission

(1) The Commission shall regulate and supervise the activities of the Department to ensure compliance with the provisions of this Act.

(2) The Commission may, at the request of the Department, render technical support and advise on the management of pension matters.

36. Death of exempt officer in service or in the course of duty

Where an officer exempted under section 8 of this Act, dies in service or in the course of duty, the Department shall pay, *en bloc*, his next-of-kin or designated survivors a gratuity and pension to which the officer would have been entitled at the date of his death calculated in accordance with section 33 of this Act.

37. Retirement of exempt officer as a result of incapacity

(1) Where an officer exempted under section 8 of this Act is retired by his employer as a result of mental or physical incapacity, the officer shall be paid gratuity and pension in accordance with section 33 of this Act.

(2) For the purpose of this section, a properly constituted medical board shall advise the employer on the officers' state of incapacity.

38. Cessation of the Department, etc.

The Department shall cease to exist after the death of the last pensioner or category of employee entitled to retire with pension before the commencement of this Act.

PART VII

Transitional Provisions for the Private Sector

39. Existing pension schemes in the private sector, etc.

(1) Notwithstanding any other provisions in this Act, any pension scheme in the private sector existing before the commencement of this Act may continue to exist: Provided that-

- (a) the pension scheme shall be fully funded and in case of any defined contribution scheme, contributions in favour of each employee together with the attributable income shall be computed and credited to a retirement savings account opened for the employee;
- (b) the pension funds and assets shall be fully segregated from the funds and assets of the company;
- (c) the pension funds and assets shall be held by a custodian;
- (d) every employee in the existing scheme shall be free to exercise the option of

coming under the Scheme established under section 1 of this Act and his employer shall compute and credit to his account his contributions and distributable income earned as at the date the employee exercises such an option subject to the regulations, rules and standards established by the Commission;

- (e) any amount computed under paragraph (d) of this subsection shall be transferred to the retirement savings account of the employee maintained with a pension fund administrator of his choice;
- (f) all investments in assets other than specified as permissible investment for pension funds and assets under section 73 of this Act may be maintained and from the commencement of this Act all investments shall be subject to the regulation, rules and standards established by the Commission;
- (g) the employer shall undertake to the Commission that the pension fund shall be fully funded at all times and any shortfall to be made up within 90 days; and
- (h) the employer demonstrates that it possesses managerial capacity for the management of pension funds and assets for a period not less than five years before the commencement of this Act.

(2) Any employer operating any defined benefits scheme shall undertake at the end of every financial year an actuarial valuation to determine the adequacy of his pension fund assets.

(3) All pension schemes existing before the commencement of this Act shall submit to the Commission a statement of affairs which shall include assets, liabilities, list of members, current statements, in the case of contributory scheme, and pensionable salary in the case of benefits schemes.

40. Closed pension fund administrator

(1) Any employer managing its pension fund that fall under section 39 of this Act shall apply to the Commission to be licensed as a closed pension fund administrator to manage such pension fund either directly or through a wholly owned subsidiary of such

employer dedicated exclusively for the management of such pension fund, provided that all its pension funds and assets are transferred to a custodian of its choice.

(2) An applicant under subsection (1) of this section may be licensed by the Commission as a closed pension fund administrator if-

- (a) it holds a minimum pension fund and assets of ₦500,000,000 and above; and
- (b) it satisfies the requirements stipulated in paragraphs (a), (d), (e), if and (g) of section 50 of this Act.

(3) Any employer with pension funds and assets of less than ₦500,000,000 that expresses a desire to maintain its existing scheme shall have such pension scheme administered by a pension fund administrator licensed under sections 44 and 50 of this Act.

41. Any employer in the private sector managing its pension fund assets to be regulated by the Commission

Every employer licensed as closed pension fund administrator to manage its pension funds and assets under section 40 of this Act shall be subject to supervision and regulation by the Commission and shall be deemed to be pension fund administrator and all provisions in this Act relating to the conduct and operations of a pension fund administrator shall apply to it.

42. Transfer of pension fund assets of the Nigeria Social Insurance Trust Fund

(1) The Nigeria Social Insurance Trust Fund (NSITF) shall establish a company to undertake the business of a pension fund administrator in accordance with this Act.

(2) The funds contributed to NSITF by any person before the commencement of this Act together with any attributable income thereof not required for the purpose of administering minimum pension as determined by the Commission shall be computed and credited into the respective retirement savings account to be opened by the NSITF for each contributor or beneficiary of the contributions made under the NSITF Act, 1993.

(3) Any contributor or beneficiary under the NSITF Act shall at least five years after the commencement of this Act select the pension fund administrator of his choice for the management of the pension fund standing to his credit.

(4) Where any person who contributed any funds under the NSITF Act has retired before the commencement of this Act, the funds due to him shall be paid to him in accordance with section 4 of this Act or in lump sum in accordance with the rules and regulations of the Commission.

(5) Where any person who contributed any funds under the NSITF Act has died before the commencement of this Act, the estate or beneficiaries of the deceased shall be paid the entitlements of such deceased person subject to the law.

(6) All pension funds and assets held and managed by NSITF shall at the commencement of this Act, pursuant to rules made by the Commission be transferred to a custodian.

(7) The Commission shall directly supervise the transfer of the funds and all necessary payments under this section.

43. Transfer of pension fund assets of the Police and Paramilitary

(1) Every Board of Trustees established under the Police and Other Agencies Pension Offices (Establishment, etc.) Act dissolved under section 99 of this Act shall transfer all the pension funds and assets, being held by it before the Public Service of the Federation and Federal Capital Territory under section 30 and composed under section 31 of this Act.

(2) The Commission shall supervise the transfer of all the pension funds and assets under subsection (1) of this section.

PART VIII

Pension Fund Administrators and Custodians

44. Pension fund administrators

As from the commencement of this Act, pension funds shall only be managed by pension fund administrators licensed by the Commission under this Act.

45. Functions of the pension fund administrators

Any pension fund administrator licensed under this Act shall carry out the following functions-

- (a) open retirement savings account for all employees with a Personal Identity Number (PIN) attached;
- (b) invest and manage pension funds and assets in accordance with the provisions of this Act;
- (c) maintain books of account on all transactions relating to pension funds managed by it;
- (d) provide regular information on investment strategy, market returns and other performance indicators to the Commission and employees or beneficiaries of the retirement savings accounts;
- (e) provide customer service support to employees, including access to employees account balances and statements on demand;
- (f) cause to be paid retirement benefits to employees in accordance with the provisions of this Act;
- (g) be responsible for all calculations in relation to retirement benefits; and
- (h) carry out other functions as may be directed, from time to time, by the Commission.

46. Pension assets custodian

As from the commencement of this Act, pension funds and assets shall only be held by pension funds custodian (in this Act referred to as "the custodian") licensed by the Commission under this Act.

47. Functions of the custodian

The custodian shall carry out the following functions-

- (a) receive the total contributions remitted by the employer under section 11 of this Act on behalf of the pension fund administrator within 24 hours of the receipt of contributions from any employer;
- (b) notify the pension fund administrator within 24 hours of the receipt of contributions from any employer;
- (c) hold pension funds and assets in safe custody on trust for the employee and beneficiaries of the retirement savings account;
- (d) on behalf of the pension fund administrator, settle transactions and undertake activities relating to the administration of pension fund investments including the collection of dividends and related activities;
- (e) report to the Commission on matters relating to the assets being held by it on behalf of any pension fund administrator at such intervals as may be determined, from time to time, by the Commission;
- (f) undertake statistical analysis on the investments and returns on investments with respect to pension funds in its custody and provide data and information to the pension fund administrator and the Commission; and
- (g) execute in favour of the pension fund administrator relevant proxy for the purpose of voting in relation to the investments.

48. Failure of pension fund administrator or custodian to obtain licence

Any person who contravenes the provision of sections 44 and 46 of this Act commits an offence and shall be liable on conviction-

- (a) in the case of an individual, to a fine not less than ₦5,000,000 or imprisonment for a term not exceeding five years or to both such fine and imprisonment; or
- (b) in the case of a corporate body, to a fine not less than ₦10,000,000 and in addition, the directors or officers shall each be liable for a fine not less than ₦2,000,000 each or a term of imprisonment not less than five years or to both such fine and imprisonment.

49. Application for a licence as a pension fund administrator

(1) A person proposing to operate as a pension fund administrator shall apply to the Commission for a licence in such form and with the payment of such fees as the Commission may, from time to time, prescribe.

(2) The Commission may, if satisfied that the applicant meets the requirements set out in section 50 of this Act, issue a licence to the applicant to operate as a pension fund administrator subject to such terms and conditions as the Commission may consider expedient and necessary in the circumstances.

50. Requirement for licence as pension fund administrator

(1) No application for licence to act as a pension fund administrator shall be granted unless the applicant-

- (a) is a limited liability company incorporated under the Companies and Allied Matters Act whose object is to manage pension funds;
[L.F.N. 2004 Cap. C20.]
- (b) has a minimum paid-up share capital of ₦150,000,000 or such sum as may be prescribed, from time to time, by the Commission;
- (c) satisfies the Commission that it has the professional capacity to manage pension funds and administer retirement benefits;
- (d) has never been a manager or administrator of any fund which was mismanaged or has been in distress due to any fault, either fully or partially, of the pension fund administrator or any of its subscribers, directors or officers;
- (e) undertakes to the satisfaction of the Commission that it shall not be engaged in any business other than the management of pension funds; and
- (f) satisfies such additional requirements or conditions as may be prescribed, from

time to time, by the Commission.

(2) All such companies and institutions already engaged in the management of pension funds who are not licenced by the Commission shall at the commencement of this Act compute and credit to the retirement savings account opened by them for each contributor all his contributions including distributable income.

(3) All such companies and institutions referred to in subsection (1) (a) above shall transfer all pension funds and assets held by them to the pension fund administrator (PFA) and custodian as may be determined by the Commission licenced under this Act.

(4) Where an applicant for a licence to operate as a pension fund administrator is a life insurance company licensed by the National Insurance Commission and does not engage in any other business, it may be granted a licence by the National Pension Commission notwithstanding the provisions of subsection (1) (e) of this section: provided the applicant meets all other requirements of subsection (1) of this section and any other requirements for a licence under this Act.

51. Application for licence as custodian

(1) Any person proposing to act as a custodian of pension funds shall apply to the Commission for a licence in such form with the payment of such fees as the Commission may, from time to time, prescribe.

(2) The Commission may, if satisfied that the applicant meets the requirements set out in section 52 of this Act, issue a licence to the applicant to carry out the functions of a pension assets custodian prescribed under section 47 of this Act.

52. Requirements for licence as a custodian

No application for licence to act as a custodian shall be approved by the Commission unless such applicant-

- (a) is a licenced financial institution registered under the Companies and Allied Matters Act;
- (b) has a minimum net worth of ₦5,000,000,000 unimpaired by losses or is wholly owned by a company with a minimum net worth of ₦5,000,000,000 unimpaired by losses or any such sum as may be prescribed from time to time by the Commission;
- (c) has a total balance sheet of at least ₦125,000,000,000 or is wholly owned by a licenced financial institution with a total balance sheet of at least ₦ 125,000,000,000;
- (d) custodian company shall issue a guarantee to the full sum and value of pension funds and assets held by it or to be held by it, however, where the applicant custodian company is a subsidiary of a qualified parent company, such guarantee shall be issued by that parent body;
- (e) undertakes to hold the pension fund assets to the exclusive order of the pension fund administrator on trust for the respective employees as may be instructed by the pension fund administrator appointed by each employee;
- (f) has never been a custodian of any fund which was mismanaged or has been in distress due to any default, either fully or partially of the custodian; and
- (g) satisfies such additional requirements as may be prescribed, from time to time, by the Commission.

53. Refusal of licence

(1) The Commission may refuse to issue a licence to any applicant pursuant to an application made under sections 49 and 51 of this Act if it is satisfied that-

- (a) the information contained in the application for the grant of a licence is false or untrue in any material particular; or
- (b) the application does not meet the requirements prescribed by the Commission for grant of licence;
- (c) the licence of the applicant had earlier been revoked by the Commission under any of the conditions mentioned in section 54 of this Act.

(2) Where the Commission refuses to register any pension fund administrator or custodian, it shall forthwith notify the applicant in the prescribed form, specifying the rea-

sons for such refusal.

54. Revocation of licence, etc.

(1) Subject to subsection (2) of this section, the Commission may revoke a licence issued to a pension fund administrator or custodian, if-

- (a) it discovers after the grant of a licence, that a statement was made in connection with the application thereof which the applicant knew to be false or untrue in any material particular;
- (b) the custodian is subject to any insolvency proceedings or is likely to be wound up or otherwise dissolved;
- (c) the conduct of affairs of the pension fund administrator or custodian does not conform with the provisions of this Act or any regulations made pursuant to or any direction issued under this Act;
- (d) any event occurs which renders the pension fund administrator or custodian ineligible to manage the pension funds or take custody of the pension funds, as the case may be; or
- (e) the pension fund administrator or custodian is in breach of any conditions attached to its licence.

(2) The Commission shall, before revoking the licence of a pension fund administrator or custodian, give the pension fund administrator or custodian at least 28 days' notice of its intention, and shall consider any representations made to it in writing by the pension fund administrator or custodian within that period before the revocation.

(3) The notice under subsection (2) of this section shall be in the prescribed form and shall specify the reasons for the intended revocation of licence.

(4) The revocation of licence of a pension fund administrator or custodian shall not in any way prejudice the entitlements of any beneficiaries of the retirement savings account under the scheme.

(5) Notwithstanding the provisions of the Companies and Allied Matters Act, 1990 the Commission shall in its revocation order, suspend the powers of the respective board of the custodian or pension fund administrator over the pension funds and assets held or administered by the company and appoint administrators with relevant qualifications who shall superintend the transfer of the assets and funds held or administered by the Company and exercise the powers of the board where necessary in accordance with this Act.

(6) The Commission shall-

- (a) notwithstanding the provisions of section 11(2) of this Act, cause the retirement savings accounts being managed by the pension funds administrator whose licence was revoked under subsection (1) of this section to be transferred to another pension fund administrator or administrators as the case may be; and
- (b) transfer the pension fund assets being held by a custodian whose licence was revoked under subsection (1) of this section to another pension fund administrator or custodian.

(7) The Commission shall publish by notice in the Federal *Gazette*, the list of the pension fund administrators or custodian whose licence have been revoked.

55. Publication of list of pension fund administrators

The Commission shall, at the end of each calendar year, publish a list of all pension fund administrators and custodians licenced by it in such manner, as it considers necessary.

56. Proper books of accounts and audit of the pension fund administrators and custodians

(1) Any pension fund administrator or custodian licensed under this Act shall cause to be kept proper books of accounts and records showing income, expenditure, assets, the investment and the returns on investments made with the contributions being managed or held by it.

(2) The pension fund administrator or custodians shall, not later than four months from the end of the year cause its accounts to be audited by qualified external auditors.

(3) Every pension fund administrator or custodian shall-

- (a) submit its audited financial accounts to the Commission for approval not later than 120 days from the end of its financial year;
- (b) cause to be published the audited account approved under paragraph (a) of this subsection in at least two daily newspapers printed and circulating in Nigeria within one month of the approval by the Commission; and
- (c) exhibit approved audited accounts in a conspicuous position in each of its offices and branches within 30 days of the approval throughout the financial year.

57. Annual reports by pension fund administrators and custodians

The pension fund administrator or custodian shall not later than four months from the end of the financial year submit to the Commission an annual report in respect of the immediate preceding year on the pension funds being managed by him and such report shall include the audited accounts.

58. Reporting obligation of external auditors

(1) Any external auditor appointed by a pension fund administrator or custodian under section 56 of this Act shall have responsibility to the Commission for the protection of pension funds and shall, in the discharge of his duties to the pension fund administrator, report any of the following situations to the Commission, that is-

- (a) any extreme situation such as evidence of imminent financial collapse of the pension fund administrator or custodian;
- (b) any evidence of an event or occurrence which has led or is likely to lead to material diminishing of the net assets of the pension fund administrator or custodian;
- (c) any evidence that there has been a significant weakness in the accounting and other records or the internal control systems of the pension fund administrator or the custodian;
- (d) any evidence that the management of the pension fund administrator or custodian has reported financial information to the Commission which is misleading in a material particular;
- (e) where he believes that a fraud or other misappropriation has been committed by the directors or the management of the pension fund administrator or custodian or has evidence of an attempt by the directors or senior management to commit such fraud or misappropriation; or
- (f) where there has been an event or occurrence which affects or is likely to affect the auditors confidence in the competence of the directors or the senior management to conduct the business of a pension fund administrator or custodian in a prudent or safe and sound manner.

(2) Nothing in this section shall be construed to be breach of the duty of the auditor to a pension fund administrator or a custodian by reason only of his communicating in good faith to the Commission, whether or not in response to a request made by the Commission, any information or opinion on any matter or situation to which this section applies.

(3) An auditor of a pension fund administrator or custodian who acts in contravention of or fails deliberately or negligently to comply with any of the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine not less than ₦10,000,000 for the firm or imprisonment of a term not less than three years for the responsible partner or principal officer or to both such fine and imprisonment.

59. General obligation of the pension fund administrator and custodian

The pension fund administrator and the custodian shall -

- (a) ensure that the pension fund is at all times managed or held in accordance with the provisions of this Act, any regulation or guidelines made hereunder and

- any direction given by the Commission;
- (b) take reasonable care to ensure that the management or safe keeping of the pension funds is carried out in the best interests of the employees;
- (c) report to the Commission, as soon as reasonably practicable, any unusual occurrence with respect to the pension funds which in his view could adversely affect the rights of the owner or a retirement savings account under the Scheme;
- (d) report to the Commission, as soon as reasonably practicable, if the employer is in default of remittance of any contributions and such remittance remains due for a period of more than 14 days; and
- (e) upon the request of an employee, transfer the retirement savings account promptly to any pension fund administrator.

60. Specific obligation of the custodian

- (1) The custodian shall maintain all pension funds and assets in its custody to the exclusive order of the relevant pension fund administrator.
- (2) The custodian shall not utilise any pension fund or assets in its custody to meet its own financial obligation to any person whatsoever.

61. Returns on frauds and forgeries

Every pension fund administrator or custodian shall render to the Commission monthly reports of any fraud, forgery or theft occurring in its organisation.

62. Notification of dismissed staff, etc.

- (1) Every pension fund administrator or custodian shall notify the Commission of any staff that is dismissed or terminated on the ground of fraud.
- (2) The Commission shall maintain a list of persons that have been so dismissed, terminated or advised to retire on the ground of fraud under subsection (1) of this section and shall circulate such list to pension fund administrators and custodians.

63. Prohibited employment

No pension fund administrator or custodian shall employ any person whose name is on the list maintained by the Commission under section 62 (2) of this Act, unless with the prior approval of the Commission.

64. Penalty for non-compliance

- (1) Any pension fund administrator or custodian who fails to comply with any of the provisions of sections 61, 62 and 63 of this Act shall pay a penalty of an amount not less than ₦1,000,000 to the Commission for every violation.
- (2) In addition to the penalty specified in subsection (1) of this section, the Commission may revoke the licence of the pension fund administrator or the custodian, in the case of persistent contravention of any of the sections referred to in subsection (1) of this section.

65. Certain prohibited transactions

- (1) No pension fund administrator shall hold any pension fund assets.
- (2) No pension fund administrator shall keep any pension funds or assets with a custodian in which the pension fund administrator has any business interest, shares or any link whatsoever.
- (3) No employee of the pension fund administrator shall engage in any business transaction or trade in any manner whatsoever with the pension fund administrator as a counterpart or with the subsidiary in relation to pension funds or assets.

66. Risk Management and Investment Committees and their functions

- (1) Every pension fund administrator shall establish the following standing committees to assist it in carrying out its functions and ensuring compliance with the provisions of this Act-

- (a) Risk Management Committee; and

(b) Investment Strategy Committee.

(2) The Risk Management Committee shall-

- (a) determine the risk profile of the investment portfolios of the pension fund administrator;
- (b) draw up programmes of adjustments in the case of deviation;
- (c) determine the level of reserves to cover the risks of the investment portfolio;
- (d) advise the pension fund administrator in maintaining adequate internal control measure and procedures; and
- (e) carry out such other functions relating to risk management as the board of the pension fund administrator may, from time to time, determine.

(3) The Investment Strategy Committee shall-

- (a) formulate strategies for complying with investment guidelines issued by the Commission;
- (b) determine an optimal investment mix consistent with risk profile agreed by the board of the pension fund administrator;
- (c) evaluate the value of the daily marked-to-marked portfolios and make proposals to the board of the pension fund administrator;
- (d) on periodic basis, review the performance of the major securities of the investment portfolios of the pension fund administrator;
- (e) carry out such other functions relating to investment strategy as the board of the pension fund administrator may, from time to time, determine.

67. Appointment of Director and Chief Executive Officer

From the date of commencement of this Act, no Chief Executive Officer or Director of a pension fund administrator shall be appointed without the prior written approval of the Commission.

68. Compliance officer

Every pension fund administrator shall employ a compliance officer who shall-

- (a) be responsible for ensuring compliance with the provisions of this Act, any rules and regulations made thereunder and the internal rules and regulations made by the pension fund administrator;
- (b) have relevant professional and cognate experience;
- (c) report to the Chief Executive Officer of a pension fund administrator and the Commission on any non-compliance by the pension fund administrator; and
- (d) liaise with the Commission with regard to any matter which in the opinion of the Commission will enhance the compliance of the pension fund administrator with the provisions of this Act and guidelines issued thereunder.

69. Pension fund administrators to maintain statutory reserve fund, etc.

Every pension fund administrator shall maintain a statutory reserve fund which shall be credited annually with 12.5% of the net profit after tax or such other percentage of the net profit as the Commission may, from time to time, stipulate as contingency fund to meet claims for which it may be liable as determined by the Commission.

70. Pension fund administrative expenses, etc.

(1) All income earned from investment of pension funds under this Act shall be placed to the credit of individual retirement saving account holder save for clearly defined and reasonable fees, charges, costs and expenses of transactions made by the pension fund administrators.

(2) The Commission shall ensure that all brochures, advertisements, communication, promotional materials and claim of pension fund administrators are truthful in every material particular without omission of any fact which will make the information contained therein misleading or deceptive.

71. Minimum pension guarantee

(1) All retirement savings account holders who have contributed for a number of years to a licenced pension fund administrator shall be entitled to a guaranteed minimum pension as may be specified, from time to time, by the Commission.

(2) From the commencement of this Act, NSITF shall provide every contributing citizen Social Security Insurance Services other than pension in accordance with the NSITF Act, 1993.

(3) From the commencement of this Act, the Nigeria Social Insurance Trust Fund Act, 1993 shall be deemed amended in all particulars to bring it in full compliance with this Act.

PART IX

Investment of Pension Fund

72. Investment of pension funds

All contributions under this Act shall be invested by the pension fund administrators with the objectives of safety and maintenance of fair returns on amount invested.

73. How pension fund assets are to be invested

Subject to guidelines issued by the Commission, from time to time, pension funds and assets shall be invested in any of the following-

- (a) bonds, bills and other securities issued or guaranteed by the Federal Government and the Central Bank of Nigeria;
- (b) bonds, debentures, redeemable preference shares and other debt instruments issued by corporate entities and listed on a Stock Exchange registered under the Investments and Securities Act, 1999;
- (c) ordinary shares of public limited companies listed on a Stock Exchange registered under the Investments and Securities Act, 1999 with good track records having declared and paid dividends in the preceding five years;
- (d) bank deposits and bank securities;
- (e) investment certificates of closed-end investment funds or hybrid investment funds listed on a Stock Exchange registered under the Investments and Securities Act, 1999 with a good track record of earning;
- (f) units sold by open-end investment funds or specialist open-end investment funds listed on the Stock Exchange recognised by the Commission;
- (g) bonds and other debt securities issued by listed companies;
- (h) real estate investment; and
- (i) such other instruments as the Commission may, from time to time, prescribe.

74. Investment outside

(1) A pension fund administrator may invest the pension fund assets in units of any investment funds:

Provided that such investment fund may only be invested in the categories of investments set out in subsection (1) of this section and in real estate.

(2) Subject to the subsisting Central Bank of Nigeria foreign exchange rules, the Commission may recommend to the President for approval the investment of pension fund assets outside the territory of the Federal Republic of Nigeria.

75. Restricted investment

A pension fund administrator shall not invest pension fund assets in the shares or any other securities issued by-

- (a) the pension fund administrator or custodian; and
- (b) a shareholder of the pension fund administrator or custodian.

76. Restriction on sale of pension fund assets

(1) The pension fund administrator shall not-

- (a) sell pension fund assets to-
 - (i) itself;
 - (ii) any shareholder, director or affiliate of the pension fund administrator;

- (iii) any employee of the pension fund administrator;
 - (iv) the spouse of any of the persons referred to in subparagraphs (i) to (iii) of this paragraph or those related to the said persons;
 - (v) affiliates of any shareholder of the pension fund administrator;
 - (vi) the custodian holding pension fund assets to the order of the pension fund administrator;
- (b) purchase any pension fund assets; and
- (c) apply pension fund assets under its management by way of loans and credits or as collateral for any loan taken by any person.

77. Additional restrictions on investments

(1) The Commission may, by regulation, impose additional restrictions on investments by pension fund administrators where such additional restrictions are imposed with the objects of protecting the interest of the beneficiaries of the retirement savings accounts.

(2) For the purpose of complying with any guidelines set by the Commission as to the quality of instruments that pension fund assets may be invested in, and to ensure the

safety of pension fund assets in general, every pension fund administrator shall have due regard to the risk rating of instruments that has been undertaken by a risk rating Company registered under the Investments and Securities Act, 1999.

78. Penalty for non-compliance

Any pension fund administrator who fails to comply with any provision of this Act shall be liable to a penalty of an amount to be determined by the Commission but in any case shall not be more than N500,000 for each day that the non-compliance continues and the pension fund administrator shall forfeit the profit from that investment to the beneficiaries of the retirement savings accounts and if the investment has led to a loss, the pension fund administrator shall be made to make up for the loss.

PART X

Supervision and Examination

79. Supervision and examination of pension fund administrators, etc.

(1) The Commission shall at least once in each year authorise an inspection or examination or investigation, as the case may be, of pension fund administrators or custodians or the Pension Department for the purpose of the Commission determining whether or not the provisions of this Act or any regulation made thereunder are being complied with.

(2) Without prejudice to the provisions of subsection (1) of this section, the Commission may, at any time, authorise one or more of the officers of the Commission or agent to inspect, examine or investigate any aspect of the activities of any pension fund administrator, custodian, Pension Department, board of trustee, employer or body relating to pension funds or assets.

80. Appointment of examiners

The Commission may appoint its officers or agents or any other qualified person as examiners as it may consider expedient to carry out its duties under this Act.

81. Powers of examiners

(1) In the performance of its duties under this section, the Commission or its officers or agents shall have power to-

- (a) inspect, examine or investigate in accordance with section 79 (1) of this Act or any regulations made under this Act and under conditions of confidentiality the books, activities and affairs of any person or body relating to pension funds;
- (b) gain access at all times during working hours to the books, accounts, documents and vouchers of any pension fund administrator or custodian or any person or body relating to pension funds;
- (c) verify or check the balances in the retirement savings account and the records of deposit made to date;
- (d) verify the investment made by the pension fund administrator with the contributions on behalf of employees; and
- (e) request from any director, manager or officer of any pension fund administrator or custodian or firm, any information or explanation as the Commission may deem necessary in each case to enable it to determine whether or not the provisions of this Act or any regulations made thereunder are being complied with.

(2) In exercising the powers under subsection (1) of this section, the examiners shall exercise reasonable care to avoid undue hindrance to the day to day activities of any pension fund administrator or custodian or any person or body relating to pension funds.

82. Examination reports

(1) The Commission shall, upon the completion of the examination or investigation, forward a copy of its report to the pension fund administrator or custodian or such other person or body with the instruction that the report be placed before the board of directors of the pension fund administrator or custodian or such other person or body.

- (2) The board of directors of the pension fund administrator or custodian or such other

body shall, within 30 days of receiving the report mentioned in subsection (1) of this section, convene an extraordinary meeting to consider the report and submit its reactions to the report and proposals for implementing any recommendations to the Commission.

(3) Any pension fund administrator or custodian or person or body who fails to comply with the provisions of subsection (2) of this section commits an offence and is liable to a fine not more than ₦500, 000 for each day during which the offence continues and if the offence continues for more than 30 days, the Commission may, in addition to the fine suspend the licence or certificate of registration of the pension fund administrator or custodian.

(4) The management of the Commission shall submit quarterly reports to the Commission on its findings in the performance of its function with respect to the supervision and examination of the pension fund administrators and custodians or any other person or body relating to pension funds.

83. Power of the Commission to order a special examination

The Commission may at any time order a special examination or investigation of the books and affairs of a pension fund administrator or custodian where-

- (a) it suspects or is satisfied that-
 - (i) it is in the public interest to do so;
 - (ii) the pension fund administrator or custodian has been carrying on its business in a manner detrimental to the interest of beneficiaries of the retirement savings account;
 - (iii) the pension fund administrator or custodian does not have sufficient assets to cover its liabilities;
 - (iv) the pension fund administrator or custodian has contravened the provisions of this Act;
- (b) an application is made thereto by-
 - (i) a director, manager or shareholder of the pension fund administrator or custodian to examine its company;
 - (ii) a beneficiary of a retirement savings account or any client of a pension fund administrator;
 - (iii) any pension fund administrator to examine the custodian of the pension fund assets that the pension fund administrator is managing;
 - (iv) any custodian to examine the pension fund administrator for whom it is holding pension fund assets.

84. The duty to produce information to examiners, etc.

Every employer, pension fund administrator or custodian shall produce and give the examiners such books, accounts, documents, vouchers, information and explanation as the examiner may request for the purpose of this Act.

PART XI

Offences, Penalties and Enforcement Powers

85. General penalty

Any person who contravenes any provisions of this Act where no other penalty is prescribed under this Act, commits an offence and is liable on conviction to a fine not more than ₦250, 000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

86. Offences relating to misappropriation of pension funds

Any pension fund administrator or custodian who misappropriates pension funds commits an offence and is liable on conviction to a fine of an amount equal to three times the amount so misappropriated or imprisonment for a term not less than ten years or to both such fine and imprisonment.

87. Offences relating to custodian

Any person who contravenes the provisions of section 6\, commits an offence and

shall be liable on conviction to a fine not less than ₦10,000,000 and each of its directors or officers shall be liable to a [me not less than ₦5,000,000 or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

88. Power of the Commission to apply additional sanctions

(1) Notwithstanding the provisions of any other law without prejudice to the penalties stipulated under this Act, the Commission shall, in addition to the penalties stipulated under this Act, cause to be removed from office any director or officer of a pension fund administrator or custodian that violates the provisions of sections 60 and 86 of this Act.

(2) The Commission may exercise the power conferred on it by subsection (1) above in cases of misconduct and or dishonesty.

89. Offences by body corporate

Where an offence under the provisions of this Act is committed by a body corporate, the body corporate and every director or officer who had knowledge or should have had knowledge of the commission of the offence and who did not exercise due diligence to ensure compliance with this Act commits an offence and shall be proceeded against in accordance with this Act.

90. Penalty for refusing to give information, etc.

Any employer or pension fund administrator or custodian or any person or body who--

- (a) refuses to-
 - (i) produce any book, accounts, document or voucher; or
 - (ii) give any information or explanation required by an inspector; or
- (b) with intent to defraud-
 - (i) produces any book, accounts, documents or voucher; or
 - (ii) gives any information or explanation, which is false or misleading in any material particular,

commits an offence under this Act and shall on conviction be liable to a fine not more than ₦200,000 or to imprisonment for a term not less than three years or to both such fine and imprisonment for every false or misleading information given, and where the offence continues to a fine not more than ₦100,000 for every day the offence continues.

91. Jurisdiction

(1) An offence under this Act shall be tried in the Federal High Court.

(2) Prosecution for offences under this Act shall be instituted before the Court in the name of the Federal Republic of Nigeria by the Attorney-General of the Federation or such officer in the Federal Ministry of Justice as he may authorise so to do, and in addition thereto and without prejudice to the Constitution of the Federal Republic of Nigeria 1999, he may-

[1999 No. 24.]

- (a) after consultation with the Attorney-General of any State in the Federation, authorise the Attorney-General or any officer in the Ministry of Justice of that State; or
- (b) if the Commission so requests, authorise any legal practitioner in Nigeria, to undertake any such prosecution directly or assist therein.

PART XII

Dispute Resolution

92. Referral of dispute to the Commission

(1) Any employee or beneficiary of a retirement savings account who is dissatisfied with a decision of the pension fund administrator or custodian may request, in writing,

that such decisions be reviewed by the Commission with a view to ensuring that such decision is made in accordance with the provisions of this Act or any regulations made thereunder.

(2) A copy of every request under this section shall be served on the relevant pension fund administrator or custodian.

(3) The Commission shall, in the exercise of its powers under this section, conduct its proceedings, in such a manner as to avoid delays in resolving the dispute and accordingly, the Commission shall dispose any matter before it finally within a period of three months from the date the matter was referred to it.

93. Arbitration

(1) Where either party is dissatisfied with the decision of the Commission or on any matter referred to it under section 92 of this Act, such party may refer the matter to arbitration in accordance with the Arbitration and Conciliation Act or to the Investment and Securities Tribunal established under the Investments and Securities Act, 1999.

[L.F.N. 2004 Cap. AI8.]

(2) Where any person or body corporate is aggrieved or dissatisfied with any action or decision of the Commission under this Act, the aggrieved person or body corporate may refer the matter to arbitration under the Arbitration and Conciliation Act or to the Investments and Securities Tribunal established under the Investment and Securities Act, 1999.

94. Arbitral awards

Any award made under section 93 of this Act shall be binding on the parties and shall be enforceable in the Federal High Court.

PART XIII

Legal Proceedings

95. Procedure in respect of suit against the Commission

No suit shall be commenced against the Commission before the expiration of a period of 30 days after written notice of intention to commence the suit shall have been served upon the Commission by the intending plaintiff or his agent, and the notice shall clearly and explicitly state-

- (a) the cause of action;
- (b) the particulars of the claim;
- (c) the name and place of abode of the intending plaintiff; and
- (d) the relief which he claims.

96. Service of notice

The notice referred to in section 95 of this Act and any summons, notice or other document required or authorised to be served upon the Commission under the provisions of this Act or any other law may be served by delivering the same to the Director-General

or the Secretary, or any principal officer or by sending it by registered post addressed to the Director-General or Secretary at the Headquarters of the Commission.

PART XIV

Miscellaneous Provisions

97. Power to make regulations

The Commission may make regulations generally for the carrying into effect the provisions of this Act.

98. Exemption of pension funds from liquidation process

(1) Notwithstanding the provisions of any other enactment or law, no pension funds or assets kept with a custodian under this Act shall be used to meet the claims of any of the custodian's creditors in the event of liquidation of the custodian.

(2) In the case of winding up, liquidation or otherwise cessation of business of the custodian or any or all of its shareholders, the pension funds or assets in the custody of the custodian shall not be seized or be subject of execution of a judgment debt or stopped from transfer to another custodian.

99. Repeal, Savings, etc.

(1) Save as herein provided, the following enactments are hereby repealed, that is-

- (a) the Pension Act, 1990;

(b) the Police and Other Agencies Pensions Offices (Establishment, etc.) Act, 1993; and the Police (Pension Rights of Inspector-General of Police) Act, 1993.

(2) Any Board of Trustees established under the enactments repealed in subsection (1) of this section is hereby dissolved and all the pension funds or assets being held by such Board of Trustees before the commencement of this Act shall be transferred in accordance with the provisions of section 43 of this Act or rules and guidelines made by the Commission.

(3) The repeal of the enactments specified in subsection (1) of this section shall not affect any additional fringe benefits, other than pension and gratuity enjoyable upon retirement by any person before the commencement of this Act except as provided by this Act.

100. Consequential amendments

The Armed Forces Pensions Act, 1990 is hereby consequentially amended to bring its provisions in line with the provisions of this Act.

[L.F.N. 2004 Cap. A23.]

101. Enactments inconsistent with this Act

If any other enactment or law relating to pensions is inconsistent with this Act, this Act shall prevail.

102. Interpretation

In this Act-

"closed pension fund administrator" means any employer or its subsidiary licenced by the Commission as closed pension fund administrator under section 41 of this Act whose business includes taking responsibility for safe custody of the funds, securities, financial instruments and documents of title of the pension fund assets to exclusively manage only pension fund of its employees;

"Commission" means the National Pension Commission established under section 14 of this Act;

"Court" means Federal High Court;

"custodian" means a company incorporated under the Companies and Allied Matters Act that has been licenced by the Commission under this Act;

"distributable income" means all income earned by the contribution less reasonable charges and costs on investment transactions;

"employee" means any person employed in the Public Service of the Federation and Federal Capital Territory or private company or organisation or firm;

"employer" means the Federal Government of Nigeria and any organisation or business that employs five persons or more;

"FCT" means Federal Capital Territory;

"member" means a member of the Commission of the National Pension Commission;

"monthly emoluments" means a total sum of basic salary, housing allowance and transport allowance;

"Public Service of the Federation" is as defined in section 318 of the Constitution of Federal Republic of Nigeria, 1999, including the Federal Capital Territory;

"pension fund" means an investment fund within the Pension Scheme which is intended to accumulate during an individual working life from contributions and investment income, with the intention of providing income in retirement from the purchase of an annuity or in the form of a programmed withdrawal, with the possible option of an additional tax free cash lump sum being paid to the individual;

"pension fund administrator" means any body corporate licenced by the Commission as a pension fund administrator and includes the Nigeria Social Insurance Trust

Fund;

"**pension fund assets**" means assets which collectively constitute a pension fund;

"**President**" means the President of the Federal Republic of Nigeria;

"**programmed withdrawal**" means a product offered by a pension fund administrator for periodic payments to a beneficiary of a retirement savings account as specified in section 4 of this Act;

"**retirement savings account**" means an account opened with a pension fund administrator as specified in section 11 of this Act;

"**Scheme**" means the Contributory Pension Scheme established under section I of this Act.

103. Short title

This Act may be cited as the Pension Reform Act, 2004.

SCHEDULES

FIRST SCHEDULE
[Section 8 (3).]

Computation of Retirement Benefits

Formula for calculation of Pensions and Gratuity in respect of Retirement

<i>Year of qualifying service</i>	<i>Gratuity as percentage of final pay</i>	<i>Pension as percentage of final pay</i>	<i>Year of qualifying service</i>	<i>Gratuity as percentage of total final emolument</i>	<i>Pension as percentage of total final emolument</i>
—	—	—	5	100	—
—	—	—	6	108	—
—	—	—	7	116	—
—	—	—	8	124	—
—	—	—	9	132	—
10	100	—	10	100	30
11	110	—	11	108	32
12	120	—	12	116	34
13	130	—	13	124	36
14	140	—	14	132	38
15	100	30	15	140	40
16	110	32	16	148	42
17	120	34	17	156	44
18	130	36	18	164	46
19	140	38	19	172	48
20	150	40	20	180	50
21	160	42	21	188	52
22	170	44	22	196	54

FIRST SCHEDULE-continued

<i>Year of qualifying service</i>	<i>Gratuity as percentage of final pay</i>	<i>Pension as percentage of final pay</i>	<i>Year of qualifying service</i>	<i>Gratuity as percentage of total final emolument</i>	<i>Pension as percentage of total final emolument</i>
23	180	46	23	204	56
24	190	48	24	212	58
25	200	50	25	220	60
26	210	52	26	228	62
27	220	54	27	236	64
28	230	56	28	224	66
29	240	58	29	252	68
30	250	60	30	260	70
31	260	62	31	268	72
32	270	61	32	276	74
33	280	66	33	284	76
34	290	68	34	292	78
35	300	70	35	300	80

SECOND SCHEDULE

[Section 16 (5).]

Supplementary Provisions relating to the Commission

Proceedings of the Board

1. Subject to this Act and section 27 of the Interpretation Act, the Commission shall have power to regulate its proceedings and may make standing orders with respect to the holding of its meetings, and those of its Committees, notices to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Commission may, from time to time, determine.

2. (1) There shall be at least four ordinary meetings of the Commission in every calendar year and subject thereto, the Commission shall meet whenever it is convened by the Chairman, and if the Chairman is requested to do so by notice given to him by not less than three other members, he shall convene a meeting of the Commission to be held within 14 days from the date on which the notice is given.

(2) Every meeting of the Commission shall be presided over by the Chairman and if the Chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of their members to preside at the meeting.

3. The quorum of any meeting of the Commission shall consist of the Chairman (or in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule) and six other members.

4. The Commission shall meet for the conduct of its business at such places and on such days as the Chairman may appoint.

5. A question put before the Commission at a meeting shall be decided by consensus and where this is not possible, by a majority of the votes of the members present and voting.

6. The Chairman shall, in the case of an equality of votes, have a casting vote in addition to his deliberate vote.

7. Where the Commission seeks the advice of any person on a particular matter, the Commission may invite that person to attend for such period as it thinks fit, but a person who is invited by virtue of this paragraph shall not be entitled to vote at any meeting of the Commission and shall not count towards the quorum.

Committees

8. The Commission may appoint one or more committees to carry out on behalf of the Commission such of its functions as the Board may determine and report on any matter with which the Commission is concerned.

9. A committee appointed under paragraph 8 of this Schedule shall be presided over by a member of the Commission and consist of such number of persons (not necessarily all members of the Commission) as may be determined by the Commission, and a person other than a member of the Commission shall hold office in the committee in accordance with terms of his appointment.

10. A decision of a committee of the Commission shall be of no effect until it is confirmed by the Commission.

Miscellaneous

11. The fixing of the seal of the Commission shall be authenticated by the signature of the Chairman and the Secretary or Secretary and such other person authorised by the Commission to act for that purpose.

12. A contract or an instrument which, if made or executed by any person not being a body corporate, would be required to be under seal, may be made or executed on behalf of the Commission by the Chairman or the Secretary or by any person generally or specifically authorised to act for that purpose by the Commission.

13. A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Commission shall be received in evidence and unless the contrary is proved, be presumed without further proof, to have been properly signed or sealed.

14. The validity of any proceedings of the Commission or its committees shall not be af-

- (a) any vacancy in the membership of the Commission or its Committees; or
- (b) reason that a person not entitled to do so took part in the proceedings; or
- (c) any defect in the appointment of a member.

interest in any
contract or arrangement entered into or proposed to be considered by the Commission or any Committee thereof-

- (a) shall forthwith disclose his interest to the Commission or committee; and
- (b) shall not vote on any question relating to the contract or arrangement.

fected by-

15. Any member of
the Commission or
committee thereof
who has a personal

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
