

Contributory Pension Scheme Information Dissemination Workshop

Programme and Presentation
18 June, 2013

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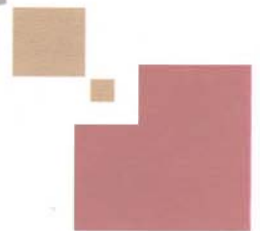
University of Ibadan, Nigeria



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Enhancing Knowledge of the Pension Scheme: The Legal Aspects of the Scheme

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Introduction

The ordeal of the Nigerian Pensioner is well known and documented. The position had always been that men and women work for Government at the Federal, State and Local Government levels for a maximum period of about thirty-five years, or retire at the mandatory retirement age for public officers, after which they are entitled to their gratuities and pension. The problem is that for majority of persons that expectation is always dashed, the hope of having a peaceful rest after spending the better part of their adult lives serving their fatherland becomes a period of frustrations and disappointment. They are asked to come for verifications of documents, for days they remain on a queue that has no beginning or end, many had collapsed while waiting, many turn to beggars, and at the end of which nothing comes out of the exercise. Our senior citizens are thus subjected to terribly harrowing experiences, unfortunately they are always asked to travel to Abuja the Nation's capital for the exercise, which results in much more hardship better imagined than experienced. In most cases, they are told that their documents are not complete, or

that their names cannot be found on the register. Yet, we read of so much money running into billions of pension funds being embezzled by so called Pension Administrators, and the fraudsters are never prosecuted. The position cannot obviously be allowed to continue, there must be a way out of this disgraceful position.

In this paper, we will look at the old position that allows for this kind of treatment of our pensioners, and then focus on the current position of law. We shall examine the current law critically, and highlight the operations of the law.

Historical Developments

Pension is simply an amount of money paid periodically, either monthly or quarterly by the employer to retired employee, after the employee has worked for a period of years and has attained the mandatory or statutory retirement age, or he is considered to be too ill to continue working. It is paid until death or a period agreed by the parties. The method of achieving this may vary from jurisdiction to jurisdiction. The first of this kind of scheme was initiated by the German

¹Pension Reform Act, 2004
Cap. Laws of the Federation
2004.

²National Provident Fund 1961.

³Nigerian Social Insurance Trust
Fund.

⁴Armed Forces Pension Acts
No. 103 of 1972.

⁵Other pension Acts includes
Pension Acts of 1972 (No. 102)
which commenced in 1st April
1974, Pension Rights of Judges
Act 1985, (No. 5), the Police
and other Government
Agencies Pension Scheme
enacted under Pension Acts
(1987) (No. 75) and the Local
Government Pension Edicts
which led to the enactment of
the Local Government Staff
Pension Board of 1987. Also, in
1993, National Social
Insurance.

Chancellor in the year 1880, it was initiated as a form of social insurance program and was soon copied by other countries and forms a basis for a social state. Bismarck introduced old age pensions and other insurance schemes to cater for accident victims, medical care, and unemployment. The idea is to put in place very good safety measures for the old and disadvantaged persons. The position was followed in most advanced countries, and today virtually every civilized country has a strong and reliable form of social welfare package which includes pension payments and other benefits for the retired persons.

In Nigeria, the first legislation on pension was the Pension Ordinance of 1951 which has retroactive effect from 1st January, 1946, which allows the Governor-General to grant pension and gratuities to public sector employees. The law sets out the criteria, which is reviewed periodically with the approval of the Secretary of State for Colonial Affairs in the United Kingdom. By 1961 it was realized that there was need to cater for the private sector which was then growing, the legislature enacted the National Provident Fund² (NPF), now Nigerian Social Insurance Trust Fund (NSTIF)³ this was established pursuant to the International Labour Organization Social Security (Minimum Standards) Convention 102 of 1952. The law caters for the employees in the private sector of the economy, and compulsorily requires the employers in the private sector to contribute a percentage of the salary of their workers towards the pension scheme under the Act. In 1976, the Government enacted the Armed Forces Pension Act and also the Pension Act⁴ No 102 of 1979⁵ Apart from these, parastatals were allowed to set up their own pension schemes under the

directives of a Board of Trustees (BOT) with standard Trust Deeds and Rules as prepared by the Head of Service.

The old scheme followed the pattern of a Defined Benefit Scheme, this involves a budgetary plan by Government, in which the Government plans and pays pension and gratuities to its retired employees as at when due, the problem associated with this system as we noted in the introduction of this paper is that, as Government revenues which is primarily based on Oil revenues reduced, and government expenditures in other areas of the economy expands it becomes very difficult to meet Government obligations under the scheme; the increasing number of employees that are retiring of course leads to increase in the budgetary provisions for them, from revenues that are not available, coupled with serious corruption in the system. There are other challenges, like administrative bottlenecks, inefficiency of the Civil Service⁶ etc, the old scheme must therefore give way to a more reliable and dependable scheme. This led to the setting up of a committee by the Olusegun Obasanjo Government to look into the pension Scheme in Nigeria headed by Fola Adeola. The Fola Adeola team considered all available options and came up with suggestion which ultimately led to the enactment of the Pension Reform Act 2004⁷ (PRA 2004).

Objectives of the Act

The Pension Reform Act 2004 has as its objectives the following:-

- a. to ensure that every person who worked in either the public or private sector recovers his retirement benefits as and when due.
- b. assist improvident individuals by

Local Government Staff Pension Board of 1987. Also, in 1993, National Social Insurance Trust Fund (NSTIF) Scheme 1993 enacted to replace the National Provident Fund with effect from 1st July 1994, with effect from 1st July 1994.

⁶Odia J.O and Okoye A.C. (2012) Pension Reforms in Nigeria: A comparison between the old and New scheme; AfroAsian Journal of Social Sciences, volume 3, No. 3.1 Quarter 1, may be seen at <http://onlineresearchjournals.com/ajoss/ort/80.pdf>. retrieved on 8/4/2013.

⁷Pension Reform Act 2004, Cap

⁸Section 2, PRA 2004

- ensuring that they save in order to cater for their livelihood during old age, and
- c. establish set of rules, regulations and standards for the administration and payments of retirement benefits for the public, and private sector⁸.
 - d. stem the growth of outstanding pension liabilities.

These are laudable objectives, and if achieved will not only assist the Government in resolving the heavy burden of unpaid retirees, but also most importantly help the retirees reap the fruit of their man years of many years of labour with little or no stress. The modalities for achieving these objectives will now be our focus.

Contributory System

The system adapted under the Act is a fully funded system unlike the former scheme which was based only on Governmental budgets and provision and subject to external influences. The new scheme is also contributory. It requires that the employee contributes 7.5 percent of his basic salary, transport and housing allowance, while the Government will also contribute 7.5 percent of the employee basic salary, transport and housing allowance. The Military personnel only contribute two and half percent of their salary while their employer (Government) contributes twelve and half percent. The private sector, also contributes the same as the public service. However, it is allowed for the employer to elect to bear the full burden of the scheme in this case the employer will pay the full fifteen percent of the employee's salary⁹. The scheme is fully funded right from the onset because the pension is not based on monies yet to be transferred into the scheme, but

monies already kept aside for the purpose immediately the account is opened.

All employees are also entitled to be fully insured for their life as employers are to maintain a life insurance policy in favour of their employees for a minimum of three times the annual total emoluments of the employee.

We may note that the percentage stated in the act is only the minimum rate of contribution as the employee may decide to voluntarily make a voluntary contribution under the scheme to his retirement savings account¹⁰. The parties may also agree to increase their contribution under the scheme. This is important, the rate of increase to the contribution need not be on equal terms, the employer may therefore elect to increase its own contribution and the Act only specified the minimum amount deductible from the employee's salary.

The Retirement Savings Account

The Retirement Saving Account (RSA) is the account opened on behalf of the employee by the Pension Fund Administrator (PFA) on behalf of the employee upon registration with the PFA. The account is opened in the name of the employee, and the responsibility of choosing the PFA rests with the employee. The employee will be given a personal identification Number (PIN) which is approved and registered with the Pension Commission. The PIN number and name of the PFA is submitted by the employee to the employer. This Account is unique, this is because, it allows the employee to change his employer, without affecting the account, the employee will only inform his new employers of his PIN and the PFA, and the contributions is secure

⁹Section 9

¹⁰Section 9(5) and(6)

and there is no need to terminate the account solely on the ground that the employee is changing his employers. The employee is allowed to change the PFA where he is no longer satisfied with services being rendered by the PFA; he may however, not be able to change his PFA more than once in a year; and he needs not adduce any reason for the change¹¹. The employee is not allowed access to the RSA or deal with the custodian of the account except through the PFA. The employee's contribution is deducted at source by the employer and within seven days, the employer must remit the contribution with that of the employee to the custodian of the asset nominated by the PFA. The custodian upon the receipt of the money will immediately notify the PFA, who will in turn credit the account of the employee. Where the employer fails to remit the contribution, then he is charged 2% of the money remaining unremitted every month. Where the Government fails to remit the contribution it becomes a debt which is paid directly from the Consolidated Revenue Fund of the Federation on the request by the Commission¹². The employee is only entitled to withdraw from the account on attaining the age of 50 or upon retirement. The withdrawal may take different forms at the option of the employee.

- a. programmed monthly or quarterly withdrawal.
- b. a purchase of annuity for life through a licensed life insurance company 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 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.¹³

In cases where the employee retired before the age of 50 in any of the following circumstances—

- i. if he retires on health grounds in the sense that a physician or properly constituted medical board certifies the employee to be physically or mentally incapable of carrying out the functions of his office.
- ii. if he is retired due to total or permanent disability either of mind or body.
- iii. if he retires before the age of 50 years in accordance with the terms and conditions of his employment.

In all the cases above, the employee is still entitled to draw on his RSA as explained above, even though he has not attained the age of 50. Where he has not attained the age of 50 but retires all the same based on the agreement with the employers or his terms of contract of employment. He cannot withdraw any money from the RSA until six months after the retirement, if he does not get any other employment; he may at his request withdraw not more than 25 percent of the entire savings in lump sum¹⁴.

Death, Dismissal or Missing Employee

In the event of death of the employee all his entitlements under the life insurance policy mandated under Section 9(3) will be paid into the RSA. The entire balance in the account is to be applied in accordance

¹¹Section 11 (2)

¹²Section (7) and (8)

¹³Section 4(1)

¹⁴Section 4(2)

with the laid down procedure for withdrawing from the RSA under section 4 to the beneficiaries under the Will of the deceased employee.¹⁵ The implication is that the employee who wrote a will may actually mention how he will desire that his RSA be utilized, if he is not alive to collect himself, the Act also mentioned the spouse and children of the deceased as beneficiaries where the deceased employee died intestate. In the absence of the wife and child, the money may be paid to the next-of-kin of the deceased designated during his lifetime, and in the absence of this, to the person appointed by the Probate Registry as the Administrator of the Estate of the deceased. The provision of Section 5(2) is a laudable inclusion and improvement in the law and practice of payments of such benefits. The usual practice is that the beneficiary must produce a letter of Administration from the appropriate court before the Bank, insurance or other financial institution can pay directly to the Estate account mentioned by the beneficiaries. The Pension Reforms Act 2004 will therefore seem to permit the PFA to pay directly to the beneficiary named in the Will without necessarily obtaining a Letter of Administration which is not only expensive but could be delayed due to administrative bureaucracy and corruption. The problems that may also be encountered is that the Government also demands the payment of about 10% of the total value of the money in the RSA. The resultant effect is that if the beneficiaries are unable to procure such money to pay Government for the probate fees and other processing fees, the money in the RSA is unrecoverable. The strict compliance with the law will be preferable. However, where there is dispute as to the identity of the wife or child, or the proper beneficiary under a

Will, the only safe alternative is to advise the beneficiaries to apply for the Letter of Administration.

Missing Employees

Where the employee is confirmed to have been missing and is not found within a period of one year and a board of inquiry set up by the commission to look into the matter concludes that it is reasonable to pressure that he has died, the provisions of Section 5 (discussed above) will apply, in this wise, the missing employee who has been confirmed or presumed dead will be treated as if he is dead, and the beneficiaries may be allowed to collect his entitlements. However, payment of the entitlements under the life insurance policy will depend on the agreement between the parties and the insurance policy where there are specific provisions on when the policy holder is missing or cannot be found, the terms of the policy will apply.

Dismissal

One of the great advantages of the new Pension Scheme is that in the event of Dismissal of the employee from his employment, under the old Pay As You Go (defined benefit) system, the employee stands to lose all his benefits and leave the employment dry and empty, under the new scheme, the employer do not have any access to the RSA which is strictly personal to the employee and no other person. The employer cannot interfere in the management or disbursement of the money in the account, the account cannot be used to set off any claim, fine, liability or debt owing the employer by the employee. In the event of dismissal therefore, the employee is entitled to withdraw his

¹⁵Section 5(2)

money under the provisions of the Act, and the employer can only adopt any other strategies to recover any debt or liability owed by the employee¹⁶.

Exemption

The Act does not apply to all categories of workers within the public service of the Federation. The following categories are exempted from the operations of the law.

1. **Judicial Officers:** The first categories of persons exempted under the law are all judicial official as stipulated in Section 291 of the constitution.¹⁷
2. **The Nigeria Police Force:** The members of the Nigeria Police Force are also exempted from the operations of the Pension Reform Act 2004, and the Federal Government recently approved a separate provisional scheme for the Police in Nigeria.¹⁸
3. **Armed Forces of the Federation:** All members of the Armed Forces of the Federation are also exempted from the operations of the Pension Reform Act 2004. All members of the intelligence and secret services of the Federation are also exempted. The rationale is to eliminate the problems associated with the contributory Pension scheme as it concerns military personnel in line with international best practices.¹⁹ By virtue of Section 2 of the Pension Reform (Amendment) Act, 2004.²⁰
4. **Less Than Three Years:** All employees who at the commencement of the Act are entitled to retirement benefits under any pension scheme existing before the commencement of the Act but have 3 or less years to retire are also exempted from the scheme. It follows that for this category of employees they will derive their entitlements and

pension under the old scheme. This in fact led a lot of employees to retire before the commencement of the Act in order to avoid the new scheme believing that the old scheme is better.²¹

Transitional Provisions: The pertinent question always agitates the mind of current employees who still have more than 3 years before their retirement but has put in many years of service to their country, is that what happens to their accrued entitlement under the old unfunded scheme as they are told that the RSA is a fresh account opened for the purpose only. These set of employees need not worry, the PRA has made provisions to safeguard their interests.

By virtue of Section 12 of the Act, the old unfunded scheme is recognized and all its accrued rights and liabilities both of employee and the Government respectively are duly taken into consideration. Since the employee is still in service, the Act provided that the accrued entitlement will be converted into bonds to be known as Federal Government Retirement Bonds which shall be in favour of the employees and redeemable upon retirement of the employee. Such that, the Bonds are not only converted into cash, but it is also transferred into the RSA of the individual retiring employee and can be accessed in accordance with the provisions of Section 4 of the Act.

The Act provides that the Federal Government shall through the Central Bank of Nigeria establish the Retirement Benefit Bond Redemption Funds (hereinafter called 'Redemption Funds') The Federal Government is to make a payment of 5% of the total monthly wage bill for the Federation into this fund, the money in this fund is then used for redeeming the Bonds as at when necessary. This strategy lifts much burden from the Federal Government and this is done until

¹⁶See Section 11 generally.

¹⁷See Federal Judicial Officers (Administration of Pensions) Act 2007.

¹⁸See the Nation, 11th April, 2013, announcement made by the Inspector-General of Police, Mohammed Abubakar.

¹⁹See the explanatory memorandum to the Pension Reform (Amendment) Act, 2011.

²⁰Passed by both Houses of the National Assembly on the 1st day of April, 2011

the last employee is fully paid off, and the rest will continue to be managed under the new scheme.²²

All existing Pensioners are also taken care of by the establishment of Pension Transitional Arrangement Department in each parastatal of Government. The Departments comprised the following:-

- i. the Civil Service Pension Department.
- ii. the Military Pension Department.
- iii. the Police Pension Department
- iv. the Customs, Immigration and Prison Pension Department.
- v. The Security Agencies Pension Department.²³

The functions and activities of the Departments are supervised by the Pension Commission.

Pension Fund Administrators: Pension Fund Administrator (PFA) is a Limited Liability Company licensed by the Pension Commission for the purpose of managing Pension Fund of employees.

The functions of the PFA are:

- 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 provision of the Act.
- c. maintain books of account on all transactions relating to pension funds managed by it.
- d. provide regular information on investment strategy, mandates returns and other performers indicators to the commission and employees or beneficiaries of the retirement savings accounts,
- e. provide customer savings 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 provision of the Act,
- g. be responsible for all calculations in relating to retirement benefits, and
- h. carry out other functions as they may be directed from time to time by the commission.²⁴

From the above, it is clear that the PFAs are not and do not keep the pension fund or assets,²⁵ their role is management²⁶ of the fund on behalf of the employees and investing²⁷ the fund as directed under the Act and subject to further regulations in this respect by the Pension Commission.

In effect the Pension fund contributed by the employees and their employers if properly managed and invested is likely to increase substantially depending on the prudent management and investment of the funds. The PFA must account not only for the funds being deposited by the employees but also the profits realized from the investments made with the funds.

Pension Fund Custodians

Pension Fund Custodians are also Limited Liability Companies registered in Nigeria for the purpose of warehousing the pension funds. The employer's contribution and the employee deductions are transferred directly to the Pension Fund Custodians (PFC) at the request of the PFA. Immediately the contribution is received, the PFC notifies the PFA, who in turn credits the RSA of the individual employee. The functions of the PFC also include the safe custody of the funds and assets on trust for the

²¹Section 8

²²Section 12

²³Section 30

²⁴Section 45

²⁵Section 65

²⁶Section 44

²⁷Section 72

employee and beneficiaries of the RSA. They also on behalf of the PFA settle transactions and undertake activities relating to the administration of pension fund investments including the collection of dividends and other related activities.²⁸ The custodian is also required to keep proper books of accounts. The employee do not have any direct dealing with the custodian, they do not participate in the appointment of the custodian, and there is no nexus whatsoever between the employee and the custodian. Though the Act refers to the custodian as a Trustee of the Funds, they are no more than mere “bankers” to the PFA for the funds deposited with them on behalf of the employee account holder. The employee is allowed to change his PFA but is not in a position to change the custodian. The question is, if the custodian defaults in their statutory duty, and mismanaged the funds, who will be held liable to the employee?

It is believed that in view of the strict provisions of the Act on the duties of the PFA and PFC, with the multiple safeguards in place, there may not be any reason for default by the custodians or the Administrators.

Legal Safeguards and Protection for the Fund

It is common knowledge in Nigeria today that Pension funds have been a source of fraudulent manipulations by the managers, virtually all the Pension schemes including the Police Pension Schemes have been manipulated and misappropriated and many of the managers are on the run today or facing prosecution in court²⁹ the importance of guaranteeing the safety of the pension funds cannot be over emphasized; as the success of the reform is

high on the safety of the funds and the assurance that pensioners can have their pension at the right time.

The Act made very important provisions to safeguards and ensure the safety of the funds protecting them from being tempered with by the managers. Some of the safeguards are discussed below.

1. Separation of Managers from Custodians

A very important safeguard is the separation of the custodians of the pension assets from the managers. The managers do not have any access to the funds. All pension funds are transferred to the PFC by the employers. They only notify the managers who must keep record of the transactions on behalf of the employees. Custodians also do not have the power to invest the money or use the funds for any purpose unless at the direction of the PFA. The custodians also have the duty to report on the investments and returns on investments with respect to the funds in its custody directly to the commission,³⁰ they are also expected to submit annual returns to the commission. The custodian and administrator must also report directly to the commission any fraudulent activity occurring within their respective organisations³¹ the custodian is barred from utilizing the Pension Fund in its custody to meet its own financial obligation or any other person whatsoever.

Pension Fund Custodian Guarantee:

The important requirement for the applicant for a license as a custodian is that the company must be a licensed financial institution with a minimum net worth of over N5 billion but must also have a total balance sheet of at least N125 billion.

A very important safeguard is that the

²⁸Section 47

²⁹See for example, Dr. Abdulrasheed Mana at the Director of customs, immigration and Prison Pension Office declared wanted by the Police he was alleged to have stolen over N15 billion Pension Fund. See Vanguard Newspaper of 14th February, 2013 one Mr. John Yusuf was convicted for stealing over N27 billion pension fund.

custodian company shall issue a guarantee to the full sum and value of pension funds assets held by it or to be held by it, and where the custodian company is a subsidiary of a qualified financial institution such guarantee shall be issued by that body.³²The obvious advantage is that the custodian not only guarantees the pension fund, but the fund is also protected from depletion by the parent company which in most cases is a Bank licensed by the Central Bank of Nigeria.

Restricted Investment:

The PFAs are not permitted to invest in just any available business, but can only invest the pension funds in categories of areas approved under the Act or as may be approved by guidelines released by the PENCOM. The main objective of investment of the pension funds is safety and maintenance of fair returns on amount invested.³³The list is stated in Section 73 of the Act, these includes, bonds, bills and other securities issued and or guaranteed by the Federal Government and the Central Bank of Nigeria. They may also invest in Banks, debenture, etc of Companies listed on a stock exchange, shares of companies listed on the stock exchange that has declared profits and paid dividends in the preceding five years etc. the investments cannot be done without strict adherence to the guidelines on investment as provided in the Act. This no doubt will assist in safeguarding the pension funds in their care.

Government Contribution:

Government's contributions are paid directly to the custodians and this must be done within seven days of the payment of the salary. Where the Government fails to pay as at when due it becomes a charge on

the Consolidated Revenue of the Federation and the Act mandates the Commission to instruct the Accountant General to pay the money without reference to any other person or authority. The fear of whether the Government may refuse to pay its contribution is avoided.

Compliance Officer:

The PFAs must employ a compliance officer who will be responsible for the compliance of the PFA with the provisions of the Act. He has the duty to report non compliance to the Chief Executive Officer of the PFA and the Commission. He is to serve as a liaison officer between the PFA and the commission with the sole purpose of insisting that the PFA complies with the guidelines and provisions of the Acts.³⁴

Supervision and Examination:

The Act includes provisions for strict supervision of the PFA and PFC, this is to ensure strict compliance with the Act and the guidelines with a view to protect the pension funds. The Commission must at least once in a year carry out inspection or examination of the activities of the PFA and PFC to ascertain whether they comply with the provisions of the Act or regulations made thereunder.³⁵ The Commission, may without waiting for the annual examination authorise its officers to inspect, examine or investigate any aspect of the activities of any PFA or PFC. The Commission may also appoint examiners to carry out a thorough examination of the activities of the PFAs and PFCs.³⁶ The Commission is also empowered to order a special examination of the officers of the PFA and PFC; the power of special examination covers a variety of issues which are listed in Section 83 of the Act.

³⁰Section 47 (J)

³¹Sections 57, 60 and 61

³²Section 52

³³Section 72

³⁴Section 68

³⁵Section 79

³⁶Section 81

Periodical Reports:

The PFA and PFC are mandatorily required to submit reports of their activities monthly and quarterly to the Commission for proper scrutiny. The auditors appointed by the PFA and PFC are also to submit their reports to the Commission. This will also enable the Commission to monitor closely the way and manner the company is managed.

Statutory Reserve Fund:

Every PFA is required to maintain a statutory reserve fund which must be credited with 12.5% of their net profit after tax as contingency funds to meet claims for which it may be liable as determined by the Commission.³⁷

Licensing and Revocation of License:

The PFAs and PFC are required to apply for license and be able to meet the very high standards set under the Act.³⁸ This is to ensure that fraudsters and non professionals are not allowed to infiltrate into the Pension Administration in Nigeria. That a license was granted, does not grant a permanent status to the licensee, the license can be revoked for various reasons as specified under Section 54 of the Act. The Act guarantees that whenever a license of any of the operators is revoked it does not affect the rights of the Pensioners or contributors under the scheme.

Rights of the Employees:

The employees/contributors are entitled to a variety of rights under the scheme. These include the following.

1. The employee is entitled to be issued with a PIN immediately an account is opened on his behalf by the PFA, and he must be given access to his account at any point in time. He can make enquires about the current net

value of his savings.

2. The employee apart from the contributions made by him and the employer, all returns and profits on investments made from investing the funds must be paid into the RSA after deductions of costs and expenses by the PFA, where this is not done the employee may make a complaint to the PFA and to the Commission.
3. The employee has a right to change the PFA at least once in a year. The advantage of the system is that the account is merely transferred to the new PFA, while the PIN is consistent and unchanged, and custodian remains the same.
4. **Complaint:** The employee has a right to lodge complaint against the PFA to the Commission and the Commission is required to look into the complaint. The Commission will only serve a copy of the Complaint on the PFA, and cause its own investigation into the matter and resolve the dispute within 3 months.
5. **Arbitration:** Where the employee is still not satisfied with the outcome of the investigation by the Commission, the employee may further refer the matter to arbitration under the Arbitration and Conciliation Act or to the Investments and Securities Tribunal established under the Investments and Securities Act³⁹ 1999⁴⁰.
6. **Court Proceeding:** The employee may file an action against the PFA or the Commission if he is still not satisfied with the outcome of the Commission's investigations. However, when the employee has opted to submit to the Arbitration he may be estopped from further filing action in court for the same complaint. But where he had not

³⁷Section 69

³⁸Section 50 for PFA and Section 52 for PFC

³⁹Section 54 (4)

⁴⁰Now 2007

opted for Arbitration, he can proceed to court to further vindicate his rights.

Conclusion:

The Pension scheme under the Pension Reform Act 2004 has addressed the problems of the past, blocked substantially fraudulent activities and bureaucratic problems always encountered by the Pensioners. The opportunity to follow up and monitor the RSA by employees is a great advantage over the former Pay As You Go scheme. The fraudulent activities of the managers of the old scheme are totally nonexistent. Under the new scheme, being a fully funded scheme, the fear of lack of payment as at when due is avoided, the account is

permanent, that is, the employee may change his employment without the need to terminate his pension entitlement with one employer before moving to the other. He may also change his PFA at any time. The advantage of investment of the Pension Fund by professionals, and the fund increase not only by the contributions but also by returns on the investments. The separation of administration and custody is another important advantage.

There are pension scheme is strictly supervised by the Commission right from the initial stages and its operations, the Commission as the regulators monitors strictly the activities of the Administrators and Custodians.

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