

The Deceased, His Pension Fund & His PFA

A quarterly publication of the Corporate Services Group

August 2011

Introduction

Prior to 2004, it was the trend to find retirees bemoan the non-payment of their pension and common-sight to find endless queues of retirees awaiting the collection of their retirement benefits. The pension administration at the time was plagued by incomplete records as well as administrative and bureaucratic challenges. The harsh conditions were deplorable as accessing pension funds effectively became a battle for survival. Upon death, it became almost impossible for the Estate of a deceased to access his pension.

In 2004, the Nigerian Pension Reform Act of 2004 ("PRA") was enacted to mitigate the difficulties which were hitherto associated with pension funds administration in Nigeria. It is geared at ensuring the due entitlement of employees in either the Public Service of the Federation, Federal Capital Territory or Private Sector to retirement benefits. In furtherance of this, the PRA stipulates the registration of every employee under a pension scheme with a Pension Fund Administrator ("PFA") to whom monthly contributions from the employee's salary are directed each month.

The PRA provides that employees under a pension scheme are not allowed to withdraw from their accounts until attainment of the age of 50 or upon retirement, or whereupon a loss of job,

such person is unable to secure another employment for 6 months.¹

While the procedure for accessing the pension funds of a living retiree is clear-cut, the Estate of a deceased retiree on the other hand must satisfy certain requirements of Probate and Administration of Estate laws before they can have access to the deceased's pension account.

This bulletin thus gives an overview of Pension Fund Administration in Nigeria, highlighting the general nature of Pension Funds and employees' contributions, the applicable rules of Administration of Estate in Nigeria, the functions of PFAs, and persons who can have access to the Retirement Savings Account of a deceased pensioner, amongst others.

Pension Fund Administration in Nigeria

Occupational pension schemes are designed to provide employees with a regular and stable income after retirement from employment. Such schemes also provide benefits to the employee's dependants upon his or her demise.

The first attempt at a pension scheme in Nigeria was in 1951 when the British Colonial Administration enacted the Pension Ordinance (the "Ordinance"). The Ordinance had retroactive effect from January 1, 1946 and was designed for

¹ Section 3, Pension Reform Act

colonial officers, who were being frequently transferred from post to post throughout the vast British Empire. When the Law eventually became applicable to Nigerians, its application was at the discretion of the Governor-General. Access to pension was therefore not an exercisable right for Nigerians. To redress this anomaly, the Pensions Act No. 102 of 1979 was enacted and made effective retroactively from April 1, 1974. It became the foundation for all other pension laws in Nigeria.²

Over the years there have been various pension schemes as provided by law; however these schemes have failed largely due to maladministration, underfunding and poor record keeping amongst others. In view of the loopholes in the various schemes, the need arose for a reform of the law to ensure the workability of the rationale behind the pension schemes. To this end, the Pension Reform Act (the "PRA" or "Act") was promulgated in 2004.

General Nature of Pension Funds and Employees' Contributions

The Act provides that every employee shall maintain a Retirement Savings Account ("RSA") in his name with any Pension Fund Administrator ("PFA") of his choice.³ The RSA is financed by contributions from both the employer and employee.

The rate of monthly contribution to the RSA is a minimum of 7.5% of the salary of

² Management of Pension Scheme in the Public Sector in Nigeria AJPAM Vol XVI, No.2 • July 2005: by Olu Okotoni and Aderonke Akeredolu

³ Section 11(1) Pension Reform Act 2004

the employee each from both the employer and the employee in the case of the public service of the Federation, the Federal Capital Territory and the private sector. In the case of the military, the minimum rate of contribution is 12.5% by the employer and 2.5% by the employee.⁴ Nonetheless, an employer may elect to bear the full burden of the Scheme by contributing 15% of the employee's monthly emolument.⁵

It should be noted however that notwithstanding contributions made by the employer, the funds in the RSA belong solely to the employee in whose name the RSA was opened and is thus the personal property of the employee upon retirement – subject only to the manner of accessing same as provided by the Act.

An employee's pension funds in the RSA would be made available to him upon retirement or upon attaining the age of fifty (50) years, whichever is later.⁶ Where the employee dies before or after retirement, the funds in his/her pension account would accrue to his/her estate as they form part of a deceased's estate. Section 5 of the Act requires the PFA to apply the funds in the RSA to the beneficiaries of the deceased's estate.

The Rules of Administration of Estate

The key issue that comes to mind where a person dies leaving properties, both real and personal including a RSA is the

⁴ Section 9 (1) Pension Reform Act 2004

⁵ Section 9(2) Pension Reform Act 2004

⁶ Section 4 (1) Pension Reform Act 2004

question of who is entitled to the deceased's property.

Traditionally, it was the case that the immediate family of a deceased person took up the administration of his estate. However, in order to legally deal in any assets of the deceased, the position of the law is that only the deceased's personal representatives may deal in such assets. The personal representatives of a deceased are either the Executors appointed by the will of a deceased or Administrators of the estate of the deceased who have obtained Letters of Administration from the Probate Registry of the relevant High Court.⁷

The rights, duties and powers of these personal representatives are very precise; and of particular importance is the power to appropriate the assets of the deceased persons. For instance, the Administration of Estate Law of Lagos State,⁸ provides that the personal representative of the deceased may appropriate any part of the real or personal estate of the deceased, including things in action towards the satisfaction of any legacy bequeathed by the deceased or of any other interest as the personal representative may deem just and according to the respective rights of the persons interested in the property of the deceased.⁹

⁷Salubi V. Nwariaku (2003) 7NWLR (Part 819) 426 S.C

⁸Cap A3, 2003

⁹Section 44 (1) Administration of Estate Law, Lagos State.

Pension Funds of Deceased Persons under the Act

Section 5 of the Act provides as follows:

- (1) Where an employee dies, his entitlements under the life insurance policy maintained pursuant to the Act shall be paid to his retirement savings account.
- (2) The pension fund administrators shall apply the amount paid under subsection (1) above in accordance with the 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.

While this provision appears to empower the PFAs to allow beneficiaries under a will access to the deceased's RSA, it is worthy of note that access to a deceased's RSA will only be allowed to the named executors in the will of the deceased who have obtained probate or the holders of a letter of Administration duly issued by the relevant probate registry.

An attempt to state the hierarchy in which the RSA can be accessed appears to be an attempt to assume the duty of the Laws of Administration of Estate. For example, what is the right of a creditor to a

deceased debtor's RSA? It would appear that the general laws of contract would regulate this, considering the fact that a creditor will have a cause of action against the estate of the deceased and where judgment is given in favour of the creditor, he may levy execution against the RSA (if there are funds there) which forms part of the deceased's estate.

Responsibilities of PFAs & Management of the Deceased's RSA

PFAs are charged with the responsibility of opening an RSA for all employees; investing and managing pension funds and assets; maintaining books of account on all transactions relating to pension funds managed; providing customer service support to RSA holders and ensuring that retirement benefits are paid to employees and also responsible for all calculations in relation to retirement benefits.¹⁰

In view of the enormity of the obligations of PFAs to RSA holders, PFAs are careful not to easily make accessible the RSA of deceased persons to ensure that the funds therein are not fraudulently obtained. The *Regulations for the Administration of Retirement and Terminal Benefits* have clearly laid down the procedure to follow in accessing the RSA of deceased employees. These are:

- a) The employer or next-of-kin/representative of a deceased person shall notify the PFA of the death of the employee.

- b) The next-of-kin/representative shall provide a satisfactory means of identification such as current international passport, national identity card or letter of confirmation of identity from the bank of the said representative or from a Notary Public.
- c) The PFA shall then confirm the identity of next-of-kin/representative with the information on its database.
- d) Where the next-of-kin/representative cannot provide any of the above mentioned, same shall be identified by a 3rd party. The said 3rd party shall provide a satisfactory means of identification such as current international passport, National Identity Card or letter of confirmation of identity from the bank of the said next-of-kin/representative or from a Notary Public and also a letter of confirmation of the identity of the claimant from a Notary Public.
- e) If the PFA is satisfied with the identity of the next-of-kin/representative of the deceased, the PFA shall demand a combination of the following items:
 1. Letter of Administration or Will admitted to Probate;
 2. Certificate of Death/Cause of Death;
 3. Certificate of Registration of Death;
 4. Police Report (if death is by accident);

¹⁰ Section 45, Pension Reform Act 2004

5. Burial Warrant issued by the Local Government Council;
 6. Evidence of Death/Burial issued by an Islamic Community Head or the Judge of a Sharia Court;
 7. Evidence of Death/Burial issued by a Leader of a registered Church; and
 8. Copy of Obituary.
- f) The PFA shall proceed to confirm the validity of the Letter of Administration or Will admitted to Probate from the relevant Probate Registry and sight the originals of other documents.
- g) The representative of the deceased shall upon confirmation be entitled to the credit sum in the RSA of the deceased.

It should however be noted that while the 8th requirement listed in (e) above is optional, a combination of the 1st and any of the requirements listed as 2 - 7 shall serve as adequate evidence of the death of the employee.

It is also noteworthy that upon confirmation of the rights of the next-of-kin/representative of a deceased employee and subsequent remittance of the funds, the PFA owes no duty to the next-of-kin/representative for continued management of the funds obtained from the RSA. The funds from the RSA fall to the estate of the deceased and are therefore managed by its representatives subject to the Laws of Administration of Estate.

The above listed requirements necessitate strict proof of identity and interest in the estate of the deceased employee in the case of a next of kin. In the case of an administrator or an executor, the importance of verifying Letters of Administration or Letters of Probate cannot be overemphasized.

Editorial

A Letter of Administration or Probate is the authority by which anyone claiming to be a representative derives his title to the estate of the deceased. This practice reverberates across several jurisdictions with similar laws governing the accessibility of the pension fund of a deceased.

In the United Kingdom, the Employee Retirement Income Security Act of 1974 regulates the payment of the deceased's pension funds to the nominated beneficiary which is dependent on the pension plan created by the deceased while alive. This plan determines whether or not the pension funds of the deceased will be paid to the nominated beneficiary as a lump sum or as an annuity. In order to administer the estate of a deceased who died intestate, a close relative¹¹ of the deceased must apply to the Probate Registry for a Grant of Letters of Administration. On receipt of the grant, the close relative then becomes the

¹¹ According to UK laws, the first person entitled to the estate of a deceased person is their spouse. If they were unmarried, their children may lay claim to their estate. If they have no children, the entitlement of their estate goes to the next closest relative.

administrator of the estate. Notably however, where the estate is below £5,000 and does not include any land, property or shares, it may be administered without a grant. This presumes the accessibility of the pension fund of a deceased by a close relative subject only to the pension plan created by the deceased without more.

It would appear that the Nigerian Law makes no provisions for such exemptions as provided in the UK. Thus persons of lesser means, who account for 70% of the Nigerian population,¹² have no opportunity to access the estate of a deceased without incurring a significant amount of costs. Persons seeking to access as little as N100,000 in the RSA of a deceased relative are constrained to go through the same process and incur the same costs as persons seeking to access no less than N1,000,000 in the RSA of a deceased relative.

While the adoption of similar exemptions may heighten the potentials of fraudulent claims to the funds of a deceased, it is nevertheless worthy of emulation and merely raises the bar for the intensity of effort to be adopted in verifying the authenticity of persons laying claim to the RSA of a deceased person.

¹² Mallam Sanusi Lamido: 5th Annual Microfinance Entrepreneurship Awards 2011.

ABOUT THE CORPORATE SERVICES GROUP

The Corporate Services Group of Aina Blankson LP, popularly known as the CSG, is one of the six Practice Groups of the Firm which operates a near autonomous practice.

The CSG comprises of specialized professionals who operate through the Secretarial & Compliance Department, the Probate & Perfections Department and the Corporate Governance Department while providing services ranging from start-up incorporation, company secretarial to regulatory advisory services, title perfections and laws guiding foreign investments. The results achieved over the years, as well as our distinguished list of clientele, affirms the CSG as a frontline corporate service provider locally and internationally.

**Corporate Services Group
Aina Blankson LP
5/7 Ademola Street
South-West Ikoyi
Lagos
Tel: +234 1 8980882-3
Fax: +234 1 2710566
www.ainablanckson.com**

For further information please contact any of the contributors:



Eghosa Isibor

c.isibor@ainablanckson.com



Gbemi Adekola

a.adekola@ainablanckson.com



Adedoyin Abiodun

a.abiodun@ainablanckson.com



Kika Alex-Okoh

Disclaimer: This document serves merely as a note and is not intended to provide legal advice to any person or group of persons whether natural or corporate regarding the issues discussed herein. All persons desirous of legal advice should therefore contact a lawyer. Aina Blankson LP shall not be liable for any breach or loss resulting from reliance on any part of this Bulletin.