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# FRAMEWORK FOR RESOLUTION OF FAILING OPERATORS IN THE NIGERIAN PENSION INDUSTRY

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National Pension Commission

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## 1.0 Introduction

1.1 The framework for resolution of failing Operators in the Nigerian Pension Industry is issued by the National Pension Commission (Commission) in the exercise of its powers under Sections 20 and 54 of the Pension Reform Act 2004 (PRA 2004). The framework is intended to standardize its actions in dealing with failing Operators.

1.2 The framework defines thresholds for regulatory intervention as well as various resolution options that would be employed by the Commission under different circumstances.

1.3 The framework covers the following:

i. identification and assessment of risks & supervisory concerns;
ii. thresholds and supervisory response;
iii. monitoring of supervisory actions;
iv. termination or modification of supervisory action; and
v. incentives for merging institutions.

## 2.0 Identification and Assessment of Risks and Supervisory Concerns

2.1 In line with supervisory best practice, the Commission must be proactive by seeking to avoid problems before they occur and intervene through appropriate resolution tools as opposed to reacting after a problem or a negative event had occurred. The methods for identification and assessment of risks that pose the greatest threats to supervisor meeting its objectives or to supervisory objectives are listed as follows:

## 2.2 Off-site Analysis of Operator's Statutory Returns

2.2.1 Off-site analysis involves the review of returns rendered by the operators through the Pensions Return Rendition System (PENRRS) deployed by the Commission to monitor the financial condition and performance of both the Fund and the Company. Ratios and trend analysis from the returns would be used to identify Operators that have weak financial condition and are at risk of failing. Financial weakness identified through routine analysis of the operators' returns would be subjected to further confirmation through on-site visit where it appears sudden and severe.

## 2.3 On-site Examination of Operators

2.3.1 On-Site Examination includes routine, special or target examinations as well as investigation. On-site examination would be Risk Based consistent with the supervisory philosophy of the Commission. A supervisory regime in accordance with the risk profile would be developed for each operator. The supervisory regime would define the frequency of examination visit for each operator. Once the on-site examination composite risk score of an operator deteriorates to a defined intervention threshold, the operator would be put under appropriate supervisory action(s) which addresses the weaknesses that led to such high risk score. However, since the composite risk score is an aggregation of different component risk ratings of various areas of operations, attention would be given to the areas with high component risk scores in selecting the appropriate supervisory action.

## 2.4 External Auditor's Report/Management Letter

2.4.1 The report of the approved External Auditor of the Operator or the Fund would be used to identify the weaknesses in financial condition of an

Operator or the Fund. Section 58 (i) of the PRA 2004 provides that the External Auditor shall have responsibility to the Commission for the protection of pension funds and shall, in the discharge of its duties to the operator, report any evidence of imminent financial collapse of the PFA or PFC. In addition, a copy of the Management Letter highlighting weaknesses identified during the audit of the Operator or the Fund would be forwarded to the Commission. The Management Letter could trigger Special Examination of the Operator with a view to confirming the claims of the External Auditors.

### 2.5 Compliance Officer's Report

2.5.1 The Compliance Report which the Compliance Officers are expected to make under Section 68 of the PRA 2004 would be used to identify the weaknesses in the operation of an Operator or the Fund.

### 2.6 Market Information

2.6.1 Market information would include information about potential weakness of an Operator or the Fund from the press, external rating agencies or any other source that may point to possible direction of the Operator or the Fund in the industry. However, information from these sources would be treated with caution and be subjected to further confirmation by on-site investigation and request for formal presentation from the Operator concerned.

### 2.7 Report from Whistle blowers

2.7.1 The Commission's Guideline on Whistle Blowing allows Whistle Blowers to report on weaknesses or concerns in an Operator or the Fund. Such reports could be subjected to further confirmation by On-Site Investigation.

## 3.0 Thresholds and Supervisory Actions or Response

3.1 Any licensed pension fund operator that exhibits any or a combination of the following risks or supervisory concerns, which may be quantitative or qualitative or both, would attract appropriate supervisory action(s) or response:

**a) Quantitative Symptoms**

i) Persistent Working Capital Deficiency;

ii) An overall composite risk score of High or very High;

iii) Insolvency or undercapitalisation; and

iv) Persistent losses from operations.

**b) Qualitative Symptoms**

v) Incessant Board and Management Crises;

vi) High Key Staff turnover;

vii) Frequent violation of the provisions of the PRA 2004, Regulations issued by the Commission and internal policies of the Operator;

viii) Continuous failure to render timely statutory returns to the Commission; and

ix) Poor corporate governance practices.

The threshold for supervisory actions set out the limit that would call for intervention from the Commission in the overall interest/stability of the pension industry. The essence is to ensure consistency and systematic approach in resolution of problems of operators and provide incentives for the operators to exercise caution and act prudently.

In determining the choice of supervisory action, the Commission would be guided by the following:

i. Type of the problem and degree of severity;
ii. Need to protect the interest of contributors;
iii. Need to sustain the confidence in the pension industry;
iv. Ability and commitment of the Board and Management to solve the problem;
v. History of similar or any other problem;
vi. Results of any previous supervisory actions; and
vii. Cost effectiveness of the proposed action.

Supervisory actions to be imposed on a potentially failing operator should also be timely, appropriate to the circumstance at hand, proportionate and address both causes and symptoms of the problem.

Supervisory actions that the Commission would deploy to address weaknesses identified in an operator would be generally categorized into corrective/remedial actions and revocation of licence.

## 3.2 Corrective /Remedial Actions

3.2.1 Corrective or Remedial Actions are actions that are aimed at resolving the identified problem. The action would be implemented by the Operator under strict monitoring by the Commission.

The table below summarizes the conditions/weaknesses in a licensed Operator which would warrant supervisory intervention and the proposed corresponding corrective or remedial actions:

| S/N | WEAKNESS/PROBLEM | SUPERVISORY ACTIONS |
|---|---|---|
| 1 | In sufficient Working Capital (where the ratio of current assets to current liabilities is less than 2:1) | i) Spot check to investigate reasons for persistent working capital deficiency.<br>ii) Annual review of working capital position, any deficiency to be made up by the PFA within 90 days.<br>iii) Request an operator to arrange for liquidity support within 30 days.<br>iv) Reduce or rationalize operating expenses immediately.<br>v) Request Operator to negotiate payment terms with creditors. |
| 2 | Undercapitalization and insolvency (where the minimum capital requirement is below the regulatory benchmark) | i) Request for fresh injection from existing shareholders within three months.<br>ii) Identify and admit a new investor that would inject new capital within six months.<br>iii) Reduce capital projects and capital expenditure on existing fixed assets immediately.<br>iv) Prohibit profit distribution/dividends.<br>v) Merger or acquisition by a financially sound Operator. |
| 3 | Persistent Losses from Operations lasting more than two years | i) Reduce operating expenses & institute cost control measures.<br>ii) Improve income generating capacity.<br>iii) Aggressive marketing of Retirement Savings Accounts (RSAs) & Approved Existing Scheme (AES). |
| 4 | Board and Management Crisis | i) Conduct Special Examination.<br>ii) Obtain Board and Management commitment to amicably resolve the |

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| | | crisis within a specific period.<br>iii) Change the composition of the Board;<br>iv) Remove the board and/or Management and appoint Interim Management Committee (IMC) to oversee the affairs of the Operator until conditions improved. |
| 5 | High Key Staff Turnover | i) Request for explanation from the Board with regards to Management staff turnover.<br>ii) Request for explanation from Management with regards to other staff turnover.<br>iii) Administer questionnaire on existing staff with a view to identifying possible reasons for the high staff turnover.<br>iv) Obtain the commitment of Board and Management to address the problem of staff turnover. |
| 6 | Frequent Violation of the Provisions of PRA 2004 and Regulations Issued by the Commission | The Regime of Sanctions would be used to address cases of frequent violations by licensed Operator. Generally the actions to be employed here can be divided into:<br><br>i) **Punitive Actions:** imposing penalties for actions deemed to be adverse to the interest of contributors. The intent is to establish deterrence and punish behavior outside established standards as required by the regulations on regime of sanctions.<br><br>ii) **Reversal Actions:** Request the operator to return to a prior status or cease certain actions. |

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| | | iii) **Compensatory Actions:** Direct the operator to compensate an aggrieved party for both the direct and indirect effect of the violations. |
| 7 | Failure to Render Statutory Returns to the Commission for three consecutive months | Take actions as provided by the Regulations on the Regime of Sanctions. |

## 3.3 Transfer of Pension Assets and Funds

3.3.1 Where the safety of pension assets and funds is at risk or the PFA is carrying on business detrimental to the interest of its RSA holders or Retirees, the Commission may transfer the pension assets and funds to another PFA subject to terms and conditions that may be determined by the Commission.

3.3.2 Similarly, where the PFC is carrying on business detrimental to the pension assets under its custody, the Commission may transfer the pension assets and funds to another PFC subject to terms and conditions that may be determined by the Commission.

## 3.4 Revocation of Licence

3.4.1 Where failure is imminent or the problem could not be rectified after the implementation of corrective/remedial actions, the Commission may revoke the licence of the Operator in accordance with Section 54 of the Pension Reform Act, 2004 if:

i) The Commission discovers after the grant of 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;

ii) The Operator is subject to any insolvency proceedings or is likely to be wound up or otherwise dissolved;

iii) The conduct of affairs of the Operator does not conform with the provisions of the PRA or any regulations made pursuant to or any direction under the Act;

iv) Any event occurs which renders the Operator ineligible to manage the pension funds or take custody of the pension funds as the case may be; or

v) The Operator is in breach of any conditions attached to its licence.

3.4.2 In revoking the licence, the Commission shall follow the following procedure:

i) The Commission would give 28 days' notice to the PFA or PFC of its intention to revoke operating licence and consider any representation made by the PFA or PFC within that period as required by Section 54 (2) of the PRA;

ii) The Commission would formally revoke the operating licence of the PFA or PFC;

iii) The Commission would publish by notice in the Federal Gazette and National Newspapers that it has revoked the operating licence of the PFA or PFC. The notice would indicate the reason(s) for the revocation and give assurance on the safety of contributors' funds in the system;

iv) The Commission in line with Section 54 (5) would appoint Administrators with relevant qualification and experience to supervise the transfer of assets to another PFA or PFC and exercise the powers of the board where necessary in accordance with the PRA 2004. The duties and responsibilities of the Administrators would be determined by the Commission;

v) The Commission shall cause the Retirement Savings Accounts being managed by the PFA whose licence was revoked to be transferred to another PFA as the case may be; and transfer the pension funds assets being held by a Custodian whose licence was revoked to another Custodian in line with Section 54 (6) of the PRA 2004 subject to terms and conditions to be determined by the Commission;

vi) The Commission may, after the transfer of pension fund assets to another PFA, request contributors to forward the name of a new PFA where their RSA balances with the failed PFA would be transferred to;

vii) Upon satisfactory reconciliation of the records of the failed PFA, the Commission would approve transfer of RSA balances from the failed PFA to the PFA chosen by the RSA holders;

viii) The Commission would request PFAs to forward the name of a new PFC where the pension assets under their management with the failed PFC would be transferred to;

ix) Upon satisfactory reconciliation of the records of the failed PFC, the Commission would approve transfer of the pension assets from the failed PFC to the PFC chosen by the PFAs managing the assets; and

x) The Commission would ensure proper reconciliation of all accounts (For the Company and all Funds under Management) of the failed PFA or PFC.

## 4.0 Communication

4.1 The Commission would develop an effective communication strategy in carrying along all stakeholders (specifically contributors, scheme owners and the general public). Accordingly, the Commission would create public awareness about the rationale of its supervisory actions.

## 5.0 Legal Action

5.1 The Commission would take necessary legal action against any Director, Top Management or staff of any licensed Operator whose actions led to or associated with losses to the contributors' fund or shareholders.

## 6.0 Monitoring of Supervisory Action

6.1 The monitoring of supervisory action would be through submission of specific returns that would be required to be forwarded to the Commission and on-site visit.

## 7.0 Termination or Modification of Supervisory Action

7.1 Supervisory action imposed on an operator would only be terminated after achieving the purpose for which it was intended i.e. the Operator has returned to the path of viability. The Commission would review the efficacy of any supervisory action from time to time and effect modification when the need arises.

## 8.0 Incentives for Merging Institutions

8.1 While the Commission would encourage partners to conclude transactions within a reasonable period of time and in a transparent manner, it may extend the following incentives to institutions that acquire another ailing institution to save it from imminent collapse:

i) Retention of Retirement Saving Accounts of the acquired institution for a minimum period of twenty four (24) months;
ii) Suspension of application of penalties for non/late rendition of returns for a period of six (6) months from the date of consummation of the acquisition in respect of the RSAs of the the acquired Operator;
iii) Moratorium for temporary violation of the Commission's Investment Regulation as a result of the acquisition; and
iv) Any other incentive requested by the acquiring institution to be considered on case by case basis.

## 9.0 Review and Amendments

9.1 This Framework would be subject to review by the Commission from time to time as the need arises.