

THE PROVISIONS OF THE PENSION REFORM ACT 2014 GOVERNING APPOINTMENTS TO THE BOARD OF THE NATIONAL PENSION COMMISSION

1. The relevant statutory provisions governing the appointment to are the following:

i. Section 19(3) of the PRA 2014 provides that the Chairman, the Director General and Commissioners shall be appointed by the President subject to confirmation by the Senate.

ii. Sec 19(4) of the PRA 2014 requires that each of the appointees represents each of the six geopolitical zones of Nigeria.

iii. Section 19(5) of the PRA 2014 provides, among other things, that the Chairman and members of the Board of the Commission shall not own controlling shares in any PFA or PFC prior to and during their tenure of office.

iv. Sec. 21(1) (h) of the PRA 2014 provides that a person would cease to be member of board if the President is satisfied that it is not in the interest of the Commission or the public for the person to continue in office.

v. Section 21(2) of the PRA 2014 provides that in the event of a vacancy in the board of the Commission, the President shall appoint a replacement from the geopolitical zone of the immediate past member that vacated office to complete the remaining tenure.

vi. Section 106(4) of the PRA 2014 provides that notwithstanding section 19(2) (a) and 26(2) & (4) of the Act, where a Board of the Commission is yet to be reconstituted after six months of the dissolution of the last Board, the President of the Federal Republic may appoint fit and proper persons with pension cognate experience to constitute the Board at the first instance, subject to confirmation by the Senate.

vii. S. 171 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) vests in Mr. President the power to appoint persons to hold or act in certain offices and to remove such persons. These offices include heads of all Federal Government extra-ministerial departments, howsoever designated.

Section 21(2) of the PRA 2014 provides that "In the event of a vacancy, the President shall appoint a replacement from the geopolitical zone of the immediate past member that vacated office to complete the remaining tenure". The PRA 2014 did not define what constitutes 'vacancy', a situation that created ambiguity as to the exact occasion when S. 21(2) of the PRA 2014 becomes operational. However, it will appear from the context that the subsection contemplates the ceazation of membership of the board through any of the scenarios listed in S. 21(1)(a)-(h) of the PRA 2014, which include resignation, death, bankruptcy, conviction of a felony, removal by the President, etc.

The argument therefore is that Mrs. Amazu's replacement as DG of PenCom must come from the Southeast zone to complete here remaining term. However, contrary to this submission, a careful review of the relevant provisions of the PRA 2014 would lead to the following conclusions:

a) A reading of both subsections (1) & (2) of Section 21 of the PRA 2014 indicates that they consistently use singular phrases such as 'a member'; 'a vacancy'; 'a replacement'; 'immediate past member that vacated office' etc. According, it is submitted that the correct interpretation of S. 21(2) of the PRA 2014 is to hold that it addresses only cases of occasional vacancies created by the exit of individual members of the board of PenCom as enumerated in subsection (1) of the same section, rather than where the whole board is dissolved or all executive management are removed by Mr. President.

b) S. 21(2) of the PRA 2014 seeks to ensure compliance with the provision of S. 19(4) of the Act, which requires that at all times, the Chairman, Director General and four Commissioners of PenCom shall each represent each of the six geopolitical zones of Nigeria.

c) There had been a precedent which illustrates the application of a similar provision under the defunct PRA 2004. Thus, in 2006 when the then President Obasanjo removed only the Chairman of PenCom, Mr. Fola Adeola, who was from the Southwest, his replacement came from the Southwest when late Chief Wole Adeosun was appointed to complete the term started by Mr. Fola Adeola.

d) The provision of S. 21(2) of the PRA 2014 applies not only to the office of the Director General but also the Chairman and other four Commissioners of PenCom where the respective individuals vacate office leaving others in office.

7. The new appointments to the board of PenCom could also be considered from the perspective of S. 106(4) of the PRA 2014 which provides that notwithstanding section 19(2)(a) and 26(2)&(4) of the Act, where a Board of the Commission is yet to be reconstituted after six months of the dissolution of the last Board, the President of the Federal Republic may appoint fit and proper persons with pension cognate experience to constitute the Board at the first instance, subject to confirmation by the Senate.

It is noted that in 2015, the Federal Government dissolved the Boards of ALL Federal Parastatals including that of PenCom. Since that time, board issues of PenCom were referred to Mr. President through the Secretary to the Government of the Federation (SGF) for approval. Consequently, it is our considered opinion that Mr. President has legal right under S. 106(4) of the PRA 2014 to appoint fit and proper persons with pension cognate experience to constitute the board of PenCom at the first instance. This right is absolute and is uninhibited by S. 21(2) of the PRA 2014. Thus, the argument with regards to the requirements of Sec. 21(2) of the PRA 2014 will not stand in the light of S. 106(4) of the PRA 2014 and there is no legal obligation on Mr. President to appoint anyone to complete an unspent term of office of any of the erstwhile DG and Commissioners.

Without prejudice to the foregoing submissions, we would like to draw attention to the overarching provision of S. 171(2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which gives the president unfettered powers to appoint or remove head of any Federal Government extra-ministerial department, howsoever called. This includes appointments to the office of the Director General of PenCom. This constitutional power cannot be eroded by any Act of parliament in the light of the provision of S. 1(3) of the Constitution which provides that "if any other law is inconsistent with the provision of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void".