



**WORKPLACE HAZARDS AND IMPERATIVES OF INCREASED  
SOCIAL SECURITY UNDER THE EMPLOYEES' COMPENSATION ACT**

## INTRODUCTION

The growing appetite for organizations, corporations, industries, factories and other business establishments to develop international influence and drive increased market share has made workplaces to be more prone to hazards. The International Labour Organization (ILO) in a recent report estimated that about 317 million non-fatal occupational injuries and 321,000 occupational fatalities occur globally each year . These estimates imply that every day approximately 6,400 people die from occupational accidents or diseases and that 860,000 people are injured on the job. It also shows that about 151 workers sustain a work-related accident every 15 seconds .

Employers are under obligation to provide reasonably safe and healthy work environment for their employees. To this extent, an employer must commit to eliminating dangers of work and machinery by providing safe workplace and work equipment; complying with conditions of health, safety and occupational health; and ensuring that machines and work equipment are installed and kept in safe conditions. Various labour legislations (International and Municipal) prescribe different measures to reduce, if not completely eliminate, work hazards .

Notwithstanding, employees are occasionally injured on the job. Such injuries may include fractured bones or limbs, aggravation of pre-existing health conditions, occupational illness and, of course, psychological injuries. These injuries, and in extreme cases fatalities, which are almost inevitable, place heavy economic burden on individuals, employers, and society. To cushion the effects of such mishap, the law has established some safety nets and palliatives in terms of social security for victims of such contingencies.

The Nigerian Social Insurance Trust Fund and Employees' Compensation Fund are birthed to provide social security window for "an open and fair system of guaranteed and adequate compensation for all employees or their dependents for any death, injury, disease or disability arising out of or in the course of employment" . The Nigerian Social Insurance Trust Fund Management Board is charged with general management and administration of the Funds. This article examines the imperatives of contributions and remittance to the Funds, compliance challenge and modalities for increased solvency of the Funds.

## THE FUNDS, MANAGEMENT AND CONTROL

The Nigerian Social Insurance Trust Fund ("NSITF") is a solvent pool into which all contributions and other monies as may be required under the establishment Act shall be paid and administered in accordance with its seminal objectives . By section 12 (b) of the Act, it is the obligation of an employer to contribute into the fund on behalf of the employee against the contingency of employment. Such contribution, or liability for penalty thereon, must not – under any guise – diminish the remuneration or allowances an employee is entitled to under his contract of employment . The Act repealed the National Provident Fund Act and the National Provident Fund (Management Board) Act .

The general control, management and investment of the fund is under Nigerian Social Insurance Trust Fund Management Board ("the Board") established under section 2 of the Act. To enhance effectiveness, all employers and employees are mandated to register with the Board as may be prescribed by regulations made under the Act .

In addition, the Board is statutorily empowered to implement the provisions of the Employees' Compensation Act (ECA), and to manage the solvent compensation fund created thereof . Thus, the key functions of the Board in this regard include;

- (a) policy formulation for effective administration of the Employee's Compensation Fund ("the Compensation Fund");
- (b) formulation of strategies for assessment of compensation, rehabilitation and welfare of employees who sustain injuries or contract occupational diseases at the workplace or in the course of their employment.

Section 56 of the ECA establishes Employees' Compensation Fund (ECF) as a viable social insurance for adequate compensation to employees or their dependants for any death, injury, disability or disease arising out of or in the course of employment.



Not only that, the Fund also caters to provision of rehabilitation palliatives to employees with work-related disabilities. The Fund consists of, amongst others, contributions payable by employers pursuant to the Act; and fees and assessments charged or made pursuant to the Act or any regulations made thereunder. Accordingly, contributions to the Fund are remitted to the NSITF.

Like a beautiful bride that has cut the mustard, the NSITF is also courted by the Pension Reforms Act. Section 71(2) of the Act saddles the NSITF with the responsibility of providing every contributing citizen with social security insurance services other than pension.

### CONTRIBUTIONS TO THE FUND

The National Policy on Occupational Safety and Health seeks to achieve a philosophy of building a united, self-reliant and egalitarian economy through reducing, as far as reasonably practicable, the causes and effects of hazards inherent in workplaces. The defunct Workmen Compensation Act betrayed expectations as the compensation prescriptions of the Act were grossly insufficient and inequitable for diverse contingencies arising in the course of employment. Worse still, the provisions of the Act were observed more in breach than compliance due to its deficiency in stipulating sanctions and enforcement measures. These mischiefs triggered the enactment of the Employees' Compensation Act to repeal the Workmen Compensation Act and to

superintend a new dispensation of comprehensive restitutio in integrum as much as possible.

The ECA applies to all employers and employees both in the public and private sectors of the Nigerian economy except members of the Armed Forces whose employment is not in a civilian capacity. As noted above, employers contribute in growing the ECF. Section 33(1) of the ECA provides thus;

“Every employer shall within the first 2 years of the commencement of this Act, make a minimum monthly contribution of 1.0 per cent of the total monthly payroll into the Fund”

By the above provision, the liability to pay 1% of total monthly payroll – which is the irreducible minimum – is a concession that can be accessed only within the first Two (2) years of the Act.

The Act was enacted in 2010 and by implication, the concession has become stale. The Board is empowered to make regulations prescribing categorization of risk factors of each class or sub-class of industry, sector or workplace and the amount of contributions to be made into the Fund; and for different assessment rates applicable to each class or sub-class of the industry, sector or workplace.

Furthermore, the Board is authorized to assess employers for such sums in such manner, form and procedure as the Board may, from time to time, determine. Payment of any assessment made becomes due on 15 January in the year for which it relates. The provisions on compulsory contribution to the Fund also apply to independent contractors and subcontractors whose principals are required to make deductions from remunerations payable under the contract or subcontract, any amount that the principal is otherwise liable to remit under the Act, and ensure the remittance of such amount to the Board.

Similarly, the NSITF Act also mandates employers to contribute into the Fund on behalf of the employee against the contingency of employment. The contributions are payable monthly (usually at the last day of the month concerned) at the rate to be prescribed by regulations made under the Act and “computed by reference to the wages of the employee concerned”.

For purposes of contributing to the Funds, both the ECA and NSITF Act are similar in definition of employer. Under both Acts, an employer is defined as any individual, body corporate, Federal, State or Local Government or any of the government agencies with whom an employee has entered into a contract of service or apprenticeship and who is responsible for payment of wages of the employee. The definition applies to firms, partnerships, and other establishments, formal or informal, where employees are recruited for provision of services.

## **THE MANDATORY CONTRIBUTIONS AND COMPLIANCE CHALLENGE**

As noted above, it is the obligation of every employer, private or public, formal or informal, to make contributions to the funds. Despite the sponsored sensitization and continuous stakeholder engagements to enlist the buy-in of employers since the inception of the Employees’ Compensation Fund (ECF) in 2011, most employers may have been delinquent in making remittances of the ECF contributions to NSITF while others have treated the EFC with disdain. In the same token, many employers and employees may have refused and neglected to register with the Board, thereby making the regulations issued by the Board less effective. This is antithetic to the policy direction of NSITF and subject of concern to all apologists of social insurance.

In 2019, the Ad-Hoc Committee of the House of Representatives on the Investigation of Non-remittance of Contributions into the NSITF issued a Public Notice inviting about 1,124 organizations across the Federal, State and Local Governments, and the private sector to an investigative hearing. The hearing was to ascertain the level of compliance by the affected organizations with their obligation to make contributions to NSITF from 2010 to 2019. Although the figure of invited employers represents an infinitesimal fraction of the available statistics, the reason behind such invitation is a sad commentary on employer apathy to the mandate of NSTIF.

The ECA has array of provisions that are self-executing and which ordinarily should compel compliance in terms of remittance of contributions to NSITF. What could be the possible excuse for the lethargy and brazen non-compliance by employers? Has the ECA or indeed the Board not got the balls to bare their fangs on employers with negative compliance? The answers to these questions lie in examination of factors that torpedo compliance by employers. Significant in the line of possible excuses for partial or non-compliance are as follows;

### 1. Lack of administrative enforcement powers

As proactive as some provisions of the ECA on enforcement of contributions may seem, it has been suggested that failure to empower the NSITF to deploy administrative enforcement measures is largely responsible for default in compliance. The Managing Director of NSITF had, in 2017, expressed concern that lack of power on the NSITF Board to seal up business premises including industries, factories and offices, like the Federal Inland Revenue Service (FIRS) would often embark on, emboldens employers to flout their remittance obligation.

### 2. Inaccurate database and demographic profile of employers

Also militating against full compliance with contributions and remittance is the near-total lack of database of employers in Nigeria.



There may be database in the public sector but greater percentage of employers in the private sector especially in the informal sub-sector are, most times, not captured. Similarly distasteful is absence of statistics on the distribution of the employers across the country, vulnerability to risk factors, staff strength, date of commencement of business, income, etc. These constitute drawbacks on assessment of contributions and renders full compliance impossible.

### 3. Poor grass root advocacy and access

Like some other laws, the policy thrust of NSITF suffers implementation deficit as a result of poor advocacy and stakeholder engagements especially at the grass root. The informal sub-sector is at the rungs of the grass root. Not so much is known about the NSITF let alone the compulsory contribution and remittance to the Fund by employers in the informal sub-sector.

Unlike the Lagos Inland Revenue Service, for example, the NSITF Board does not access most employers at the grass root with a view to sensitize them and carry out its statutory duty of raising assessment of their contributions to the Fund. It is difficult to expect such employers to, voluntarily, make remittance of their contributions.

Notwithstanding the compliance setbacks, more efforts can be galvanized to realise the set objectives of the ECA and NSITF.

## **MODALITIES FOR INCREASED SOLVENCY OF THE FUNDS**

It is beyond peradventure that the core mandate of NSITF is to broker pro-active measures in providing social security protection against exigencies of income insecurity in accordance with international best practices. Official statistics shows increasing accidents at workplaces with compelling need for compensation of victims and/or their dependents, whilst the rate of compliance by employers of labour remains abysmally low. According to the data released by the Managing Director of NSITF, Mr. Adebayo Somefun, in May 2019, “over 24,880 claims and compensation had been processed and paid to beneficiaries under different contingencies”. In addition, about 347 dependants and 448 disability beneficiaries were on monthly payroll of the Fund as at February 2019 while 20 persons above the age of 55 had been paid lump-sum on one-off basis

The above statistics and worsening conditions of environments under which many employees operate in Nigeria justifies a call for increased solvency of the Fund so as to deliver on the mandate. Below are recommended modalities to enhance more contributions and remittance and ultimately shore-up the solvency margin of the Fund.

## 1. Enforcement measures under the ECA

Section 36 (2) of the ECA makes any unpaid assessment and/or any other sum an employee is liable to pay a form of receivable in respect of which the Board can locate a cause of action for its recovery including cost of the action. Also, the Board is empowered to impose a penalty of 10% on any unpaid assessment or value of security required, which is also recoverable. To give power of enforcement more bites, there are penal sanctions for violations and default on provisions that engage contributions, assessment and reports. The penal sanctions adjudge the employer, its director(s), manager(s), secretary or other officers of the body corporate, partner or officer of the firm, as the case may be, complicit for purposes of prosecution.

## 2. Inter-agency collaboration for demography of employers

In the absence of comprehensive database of employers in Nigeria, advantage can be taken of inter-agency collaboration to build functional directory of employers, the nature of business, risk factors, staff strength, tax returns, date of commencement of business, income, etc. For example, the Board can leverage records of tax returns to Federal Inland Revenue Service (FIRS) and Lagos Inland Revenue Service (LIRS) to conjure rough figure of employers in Lagos State and indices for assessment of contribution liability. Similarly beneficial is collaboration with various pension fund administrators (PFAs) to access information on employers, staff strength and their pension liability. The synergy will enhance access to more employers and a seamless process of assessment of amount to be contributed to the Fund.

## 3. Improved grass root advocacy

The Board can do more by engaging in massive and effective sensitization drive aimed at enlisting the co-operation and support of workers and employers. This is necessary especially at the grass root where most employers in the informal sub-sector operate. More than that, the mass of employees should also be enlightened on the benefits of the Fund to the effect that they are encouraged to register with and inform the Board of the fact of their employment to enable the

Board make assessment and monitor compliance by the employers.

## 4. Ministerial and other Administrative support

The Board can exercise its powers under section 53 of ECA to appoint consortium of auditors, accountants and legal practitioners to examine the books and accounts of any employer with a view to assess their liability, level of compliance and prosecute civil actions for recovery of value of assessment or any shortfall therein. The consortium, in deserving cases, should be assisted to obtain fiat from relevant authorities to prosecute defaulters and violators of the Act. This, no doubt, will lead to more compliance.

Government at all levels should make it mandatory for any employer of labour desirous of bidding for government contracts to present and accompany the bid with its NSITF compliance certificate for at least Three (3) years. NSITF may also seek the co-operation of the Central Bank of Nigeria towards getting the latter to issue regulations to banks and other financial institutions to mandate corporate customers to comply with NSITF Act before opening and/or maintaining their respective accounts. The compliance certificate should also be made a major requirement for employers seeking one service or the other within the government circles. This will go a long way in ensuring strict compliance and thereby lessen the burden on enforcement teams.

## CONCLUSION

The statutory mandate of NSITF Board is enormous and the cost implication of delivering on the set target is huge. The real task before the Board is evolving strategies to fast-track implementation of the mandate such as will enhance the shared care arrangement designed to meet contingencies of employment. It is necessary that all stakeholders demonstrate strong commitment to sustained efficiency in implementing the vision of the scheme.

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An Associate Partner at Tope Adebayo LLP, Harrison Ogalagu is an Attorney with extensive experience in corporate and commercial practice. His portfolio consists of a diverse range of transactions including dispute resolution arising from corporate finance and capital market transactions and is familiar with the practice and procedures of the Superior Courts of Record in Nigeria, and major institutional and ad hoc alternative dispute resolution proceedings.

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