FINANCING RESIDENTIAL MORTGAGE WITH PENSION FUNDS: GUIDANCE NOTE FOR RSA HOLDERS, MORTGAGE LENDERS AND PENSION OPERATORS

The move to allow retirement savings account (“**RSA**”) holders, to finance residential mortgage with part of their pension funds, has its origin in the Pension Reform Act of 2014 (the “**Act**”). Under section 89(2) of the Act, a Pension Fund Administrator (“**PFA**”) is allowed to apply a percentage of the pension assets in the RSA towards financing the equity contribution required to be made by a RSA holder to secure residential mortgage. The allowable percentage of the pension assets and other applicable terms and conditions are to be determined by guidelines issued, from time to time, by the National Pension Commission (“**PenCom**”). In furtherance of this provision, PenCom issued the ***Guidelines on Accessing Retirement Savings Account (RSA) Balance towards Payment of Equity Contribution for Residential Mortgage by RSA Holders*** on September 26, 2022 (the “**Guidelines**”).

Designed to facilitate home ownership by RSA holders, deepen the mortgage sector through provision of a sustainable long-term finance, and spur socio-economic development by narrowing the nation’s lingering housing deficit, the Guidelines essentially set eligibility criteria for RSA holders and mortgage lenders, establish documentation requirements, set out operational guidance for participating entities, and prescribe infractions for which pension operators involved shall be liable to administrative sanctions. This article provides a quick compliance guide for RSA holders, primary mortgage institutions, PFAs, Pension Fund Custodians (“**PFCs**”), and relevant stakeholders in the economy.

What RSA holders should know

- The Guidelines permit an eligible RSA holder to apply twenty-five percent (25%) of the total RSA balance as at the date of application, to fund equity contribution for residential mortgage.
- An eligible RSA holder is an employee registered under the Contributory Pension Scheme (“**CPS**”) and whose RSA has received both the employer’s and employee’s mandatory contributions for a cumulative minimum period of 60 months (5 years). In addition to this, the RSA holder shall be in active employment (either as a salaried employee or as a self-employed person) and shall not have less than three (3) years to retirement, at the time of the application.
- Existing retirees on the CPS and persons who are exempted under the Act are not eligible to apply under the Guidelines.
- Married couples, who are both RSA holders, are eligible to make a joint application provided that they each meet the eligibility requirements.
- The allowable limit shall remain 25% of RSA balance irrespective of the percentage of equity

contribution required by the mortgage lender. Where the allowable 25% is higher than the value of the equity contribution required, the RSA holder shall nonetheless be able to access only an amount equivalent to the equity contribution. Also, where the allowable 25% is lower than the value of the equity contribution, the RSA holder shall be required to deposit the difference with the mortgage lender before an application under the Guideline can be approved.

- Subject to the Guidelines, an eligible RSA holder who has made voluntary contribution ("**VC**") as permissible by the Act, shall be allowed to utilize the contingent portion of the VC in meeting the required equity contribution. Similarly, NSITF and other Pre-Scheme Contributions of active RSA contributors, are allowed to form part of the RSA balance in determining the required 25% equity contribution.
- Utilization of the allowable 25% by an eligible RSA holder for equity contribution for residential mortgage under the Guidelines, shall not render the RSA holder ineligible for payment of 25% of the RSA balance for loss of job in line with the provisions of the Act, and verse versa.
- Subject to the Guidelines, Micro Pension Contributors (persons who are registered under the Micro Pension Plan) are also allowed to access their RSA balances for residential mortgage.
- RSA balance can be accessed for residential mortgage by an eligible RSA holder only once.
- Documentation requirements include the following:

I. Mortgage Offer Letter.
II. Application for Mortgage Form ("**application form**").
III. Property Offer Letter (obtained from the property owner/approved agent, showing value, type, and address of property).
IV. Loan Amount.
V. Equity Contribution.
VI. Bank account details of the applicant with the Mortgage Lender.
VII. RSA Statement
VIII. Indemnity by the Mortgage Lender to the PFA on the use of the equity contribution.
IX. Evidence of payment of difference, where 25% of RSA available, cannot cover equity required by the Mortgage Lender.
X. Application form signed by the RSA holder to the PFA.

What mortgage lenders are required to do

To qualify as a mortgage lender under the Guidelines, a primary mortgage bank or commercial bank shall be licensed by the Central Bank of Nigeria ("**CBN**") to provide mortgage financial services, in particular, residential mortgage lending, and shall also meet the minimum capital requirement as prescribed by the CBN from time to time. In addition to this, a mortgage lender shall:

- maintain a good financial standing all the time;
- comply with the industry's uniform underwriting standards and CBN-approved management and operational policies and prudential requirements;
- comply with the provisions of sections 2 and 4(1) & (5) of the Act, regarding the classes of employees who are required to register under the

CPS; the prescribed rates of monthly contributions; and the mandatory Group Life Insurance Policy for each employee;

- have a valid Pension Clearance Certificate issued by PenCom in line with the Act.
- provide application form to eligible RSA holder;
- review application form submitted by an RSA holder and carry out due diligence to verify the sufficiency of the 25% of an applicant's RSA balance for meeting the required equity contribution, genuineness of the property offer, and to ensure that the property has a valuation report by a licensed and approved estate surveyor & valuer;
- issue a mortgage offer upon an applicant-RSA holder meeting all eligibility/documentation requirements and forward same to the relevant PFA in the prescribed form;
- issue a notification of readiness for disbursement to the relevant PFA where an application under the Guidelines eventually receives PenCom's approval;
- issue a confirmation letter to the PFA, within one (1) working day of the receipt of the equity contribution in respect of an application for residential mortgage;
- notify PenCom in the event of foreclosure of the mortgage property;
- notify an applicant-RSA holder and the relevant PFA where a property presented in the application becomes unavailable before the mortgage is approved and disbursed, within one (1) working day of determining the unavailability; and
- return the equity contribution to the PFC, where the mortgage lender or the RSA holder could not continue with the mortgage for any reason before execution of the Deed of Assignment, within two (2) working days after which the decision is made.

What participating PFAs and PFCs should note

Pension operators qualified to participate under the Guidelines are PFAs and PFCs, licensed by PenCom to manage and keep custody of pension assets respectively. Particularly, a PFA shall be required to:

- issue a duly endorsed RSA Statement to an applicant under the Guidelines;
- review application form and the supporting documents received from a mortgage lender in respect of an RSA holder, within two (2) working days;
- update the applicant's Mandate File within two (2) working days, upon successful completion of documentation review;
- compute and validate that the requested amount is not more than 25% of the applicant's RSA balance;
- process an application and forward same to PenCom within two (2) working days, for approval;
- notify the applicant-RSA holder within one (1) working day of receiving approval or decline from PenCom (and state the reasons in the case of a decline);
- promptly notify the mortgage lender in the case of an approval of equity contribution and request for the CTC of, (i) confirmation of title of property, (ii) confirmation of availability of property, (iii) required insurance policies on the property and, (iv) valuation of the property carried out by an

approved licensed and independent valuer; and

- ensure that the approved equity contribution is remitted into the applicant's account with the mortgage lender, within four (4) working days upon receipt of all required documents. Further to this, issue a payment instruction to its PFC to remit the approved amount into the designated account within two (2) working days (**the PFC shall comply with this timeline**).

The PFA and the PFC both have obligation to render returns to PenCom under the Guidelines. In this regard, the pension operators shall forward to the Commission, on monthly and annual basis:

- details of payments made in respect of equity contribution for residential mortgage, in a prescribed format;
- records of rejected applications with reasons, in a prescribed format;
- records of equity contribution refunded by the mortgage lender with reasons, in a prescribed format; and
- reconciled records of all approvals in respect of equity contribution for residential mortgage.

Our take

The Guidelines created a practicable implementation framework, for the provisions in the Act permitting utilization of pension assets for financing residential mortgage. This is a special exemption to the general rule prohibiting pension operators from applying pension funds under their management as loans and credits, or as collateral for any loan taken by a RSA holder or any person whatsoever. To maintain this fundamental principle and ensure the safety of the funds, the Guidelines provide that a RSA holder and the mortgage lender shall indemnify the PFA, where the funds released from the RSA for payment of equity contribution is not exclusively used for this purpose.

The Guidelines appear sacrosanct with the timelines within which specific tasks are to be done and is therefore highly probable, that its implementation will achieve an optimal rate of compliance by affected persons. By the same token, the provision for administrative sanctions (in monetary and non-monetary terms) for infractions/violations of the

Guidelines, especially regarding the specified roles and obligations of PFAs and PFCs, is expected to drive efficiency of the pension for mortgage regime and engender smooth attainment of the overall objectives of the Guidelines. However, we note that the requirement for PenCom's approval of every application submitted by RSA holders is a potential bureaucratic bottleneck, likely to stifle the application cycle and impact the efficiency of the pension for mortgage regime, especially by the time many RSA holders subscribe to the scheme

Pension assets under management in Nigeria stood at approximately 14.27 trillion Naira at the end of Q2 2022, according to data released by PenCom while Nigeria's housing deficit is estimated at 28 million housing units, according to a recent report credited to the Federal Mortgage Bank of Nigeria. As at the end of 2020, mortgage loans as a share of GDP stood at 0.031% and mortgages account for less than 1% of total banking assets, according to figures published by the CBN.

The issuance of the Guidelines highlights the huge economic potential waiting to be unlocked in the Nigerian mortgage sector and the attendant multimillion-naira real estate development transactions which implementation of the Guidelines is expected to trigger. RSA holders who are potential applicants and the participating primary mortgage banks, licensed commercial banks, and pension operators should take immediate steps, including seeking necessary legal advice, on compliance with the Guidelines.

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