

What you should know and do about the Industrial Training Fund (Amendment) Act 2011

By Taiwo Oyedele



The Guidelines for refund claim under the ITF are cumbersome making it difficult for most employers to derive any benefit from the scheme. As if this was not enough, employers now have to pay more and get less.

The Industrial Training Fund Act (ITFA) came into effect on 8 October 1971. The purpose of the Act was to establish a Fund – The Industrial Training Fund (ITF) - to be utilized to promote and encourage the acquisition of skills in industry or commerce in Nigeria with a view to generating a pool of indigenous trained manpower sufficient to meet the needs of the economy.

The Council established under the Act is required to provide or secure the provision of training for persons employed or intending to be employed in industry or commerce as may be required; approve such courses and facilities provided by other persons; consider the employment in industry or commerce as appears to require special consideration and publish recommendations with regard to the nature and length of the training for any such employment and the further education to be associated with the training. In addition the Council is required to carry on or assist other persons in carrying on research into any matter relating to training for employment in industry or commerce.

Also, the Act requires employers to provide adequate training for their indigenous staff with a view to improving on the skills related to their job. Evidence of such training is to be forwarded to the ITF to obtain refunds.

Over four decades later, the ITFA is yet to make any noticeable impact. Like many other initiatives, the key issue is that of implementation. Rather than addressing the implementation issues, the Act was recently amended with changes that seem to take the scheme further from its set objectives.

The Industrial Training Fund (Amendment) Act 2011 was signed by the president on 3 June 2011 and gazetted on 22 June 2011. The amendment has a commencement date of 3 June 2011.

Based on the changes, the ITF is now empowered to appoint agents to assist in the performance of its functions. As a result consultants are now being used to carry out audit and enforce compliance.

Minimum threshold for an employer to become liable for contribution under the Act has been reduced from 25 employees to a minimum of 5 employees or a turnover of N50 million and above per annum. The required contribution is 1% of payroll to be paid by the prescribed date defined in respect of year 2011 to mean a date not later than 3 months from the date of

commencement of the Act which is 3 September 2011; and in respect of every subsequent year, means a date not later than 1 April of the following year. “*Payroll*” has been defined to mean the sum total of all basic pay allowances and other entitlements payable within and outside Nigeria to any employee in an establishment, public or private. “*Employees*” means all persons whether or not they are Nigerians employed in any establishment in return for salary, wages or other consideration, and whether employed full-time or part-time and includes temporary employees who work for periods of not less than thirty days (previously 3 months in a year).

Organisations bidding or soliciting businesses from government and private entities are now required to show evidence of compliance with their statutory obligations with respect to payment of training contribution to the Fund. All regulatory agencies of the Federal Government are required to ensure compliance with this provision. Entities in the free trade zone requiring approval for expatriate quota and/or utilizing custom services in matters of export and import are to show proof of compliance with the Act.

Variation of the rate of contribution is now to be by order published in the Gazette by the Minister of Industry with the approval of the Federal Executive Council. Previously The Minister may, with the approval of the President by order published in the Federal gazette, vary the rate of contribution. The maximum refund which an employment can claim has now been reduced from 60% to 50% of the amount paid by such employer subject to the training programme of the employer being in accordance with the Fund’s reimbursement schemes. This goes against all expectations, one would have expected that with growing number of employers now required to contribute, the total fund available to the ITF should increase and therefore no justification for a reduction in percentage of contribution available as refunds to complying employers.

Penalty for failure by an employer to provide adequate (documented) training for its indigenous staff or to accept students for industrial attachment purposes or providing false returns or information is liable on conviction in the case of a body corporate to a fine of N500,000 (previously N5,000) for the first breach and N1,000,000 (previously N10,000) for each subsequent breach. In the case of the Chief Executive, Secretary or other principal officer of the company to a fine of N50,000 (previously N1,000) or two years imprisonment for a first breach and two years imprisonment without option of fine for each subsequent breach.

The power to waive penalty in whole or in part is now vested in the Director-General of the Fund (previously the Council). Action for recovery of contributions under the Act may now be instituted by agents of the Fund on behalf of the Director-General. Contributions for this purpose include underpayment and any interest or penalty payable for late payment. Any question or dispute relating to liability of an employer to pay contribution under the Act is to be determined by the court (previously by the Minister of Industry).

The punitive section which imposes a penalty of 5% for each month or part of a month on outstanding contribution should have been amended and interest brought in line with best practice. It is not appropriate that the law was gazetted late effectively making the application retrospective.

In a way, making employers with 5 employees liable under the scheme is putting unnecessary burden on micro businesses who should be encouraged (not discouraged) to employ more Nigerians. Also the N50 million annual turnover thresholds appears like a fund generating provision than a thing designed to meet the Fund’s training objective. There are shell companies and special purpose vehicles like investment holding companies which have few or no employees but earn annual income of N50m or more. Such companies will only contribute and have no opportunity to benefit directly from the activities of the Fund or obtain any refund of contributions made.

The Guidelines for refund claim under the ITF, including the 2-week advance notice of training, are cumbersome making it difficult for most employers to derive any benefit from the scheme. As if this was not enough, employers now have to pay more and get less.

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