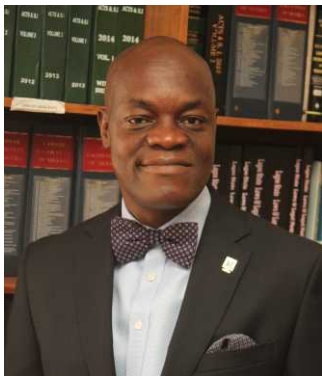


Thought Leadership | *Afolabi Elebiju*

Vestiges: Do We Still Need the Industrial Training Fund (ITF)?

Introduction

The *Industrial Training Fund Act, Cap.19 Laws of the Federation of Nigeria (LFN) 2004, (ITFA)*, originally enacted in 1971, established the Industrial Training Fund (ITF) to comprise sums provided by the Federal Government and contributions by employers with the sole objective of “promoting and encouraging the acquisition of skills in industry or commerce with a view to generating a pool of indigenously trained manpower sufficient to meet the needs of the economy.”² In June 2011, the *Industrial Training Fund (Amendment) Act (ITFAM)* amended the *ITFA*, further amplifying its implementation.



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Whilst it has been argued that the *ITFAM* rather drives the *ITFA* away from its sole objective, the more pertinent question is: does Nigeria actually still need the ITF? This article will attempt to show that the ITF is an anachronism and a regulatory overhang, as its underlying objective could still be achieved without the institution. We will preface our discussion with an overview of the ITF regime.

Overview of the ITF Regulatory Regime

The ITF regime mandates employers meeting prescribed thresholds (of turnover and employee numbers)³ to contribute one percent (1%) of their annual payroll cost to the ITF, not later than 1st April of the following year.⁴ “Contribution” includes “underpayment and any interest or penalty payable or for late payment, as the case maybe” (section 14 *ITFAM*); whilst penalty for none or late payment is 5% monthly interest on the unpaid amount(s). Two key requirements merit special mention: training prescriptions and refund of contribution.

A. Training

All employers are mandated to comply with set guidelines for systematic and effective training of their employees.⁵ They include, having:

- (a) *Training Policy (TP)*: The TP which represents the commitment of top management to staff training and development, should also specify various types of training including orientation and induction of new employers. A written TP approved by the management should be made known to the employees either by means of induction courses, hand-outs, manuals and bulletins and submitted to the Fund at the beginning of each year.
- (b) *Training Plan*: An Annual Training Plan (ATP) should be submitted to ITF and approved before the beginning of the training year. In the event of any change in the approved ATP, such amendments must be communicated to ITF not later than one month after such amendments or changes.

¹ Originally published (in February 2020) as a guest article in KPMG’s *Nigerian Tax Journal 2020*, pp.40-42. The author acknowledges the input of his LeLaw colleagues, particularly Chuks Okoriekwe to this article, but is wholly responsible for the views expressed herein.

² See section 2 *ITFA*, as amended by section 3 *ITFAM*.

³ Sections 16 *ITF* and *ITFAM* define ‘employer’ as “any person engaged in industry or commerce with whom an employee entered into a contract of service or apprenticeship and who is responsible for the payment of wages or remuneration to the employee.” Prior to June 2011, employers having at least 25 employees were subject to *ITFA*; subsequently, the requirement became at least 5 employees or a minimum turnover of N50 million. See sections Section 6(t) *ITFA* and 6 *ITFAM*. Note that section 16 *ITFAM* defines employees “as 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 not less than thirty days.” Consultants being “independent contractors”, and excluded from “payroll”, would not be regarded as employees.

⁴ “Payroll” has been defined by section 16 *ITFAM* as “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.” *ITF Form 7A (Employer Registration and Payment of Training Contribution Form)* clarifies the coverage of the various types of entitlements. A pertinent (and maybe moot) question is: should training costs be included as part of payroll cost for the purposes of computing the 1% contribution? Excluding training as part of “payroll cost” reduces the base for making the 1% contribution and vice versa.

⁵ See Section 8 *ITFAM*. Employer’s refusal to train indigenously staff shall be seen as a breach of this provision and such an employer shall be guilty and liable on conviction.

Adhoc trainings must be communicated two or four weeks prior for local and foreign trainings respectively.⁶

(c) *Training Records*: Employers are expected to keep and update all necessary records relevant to the training.

B. *Obtaining Refunds from the ITF*

Every employer is entitled to **up to 50%** refund of their contributions based on their approved ATP by the ITF,⁷ upon the ITF being satisfied that the employer's training is adequate and meets the ITF's onerous reimbursement criteria.⁸ Furthermore, the ITF shall notify the Federal Board of Inland Revenue (FIRS) of any refund made to employers.

bigger and more structured the business, the more they tend to institutionalise training as a key part of their human capital cum business strategy;

- *ITF contribution is an unnecessary addition to the list of taxes in Nigeria*: The ITF contribution swells the numbers of payments to government by Nigerian businesses. In a sense, it smacks of

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Does Nigeria Still Needs the ITF?

It goes without saying that human capital is critical to national development, and this truism is real across all geographies. However, whilst the objective behind the ITF is a noble one, but can be achieved even more efficiently without the ITF for the following reasons:

- *The ITF represents an 'unnecessary' incentive*: Employers - as often reflected by their long term business strategy - already have sufficient motivation to develop their staff. They realise - without the ITF - that people is their most important factor of production, and that the employer's long term sustainable future (anchored on growth, profitability and competitiveness), cannot be achieved without people. Therefore, they will take a disciplined approach to human capital development because it makes unassailable business sense to do so: develop/train your personnel or be left behind and risk extinction. Often, the

double taxation because the typical employer would have already or will incur employee training costs, whilst still being required to contribute 1% of their annual payroll costs to government. Whilst it may be argued that the prospect of 50% refund enables employers claw back some of their ITF contributions, the considerable administrative energy and resources required to achieve could more often than not have been better focused on the employer's core business. Apparently, the foregoing contributes its quota to inhibiting Nigeria's investment attractiveness. In other words, Nigerian tax system would be much simpler without the ITF;⁹ similarly Nigeria's unimpressive ranking in the annual global tax comparative study, *Paying Taxes* will likely be better without ITF;¹⁰

- *ITFA's requirements detract from reform efforts to improve ease of doing business*: The same point applies to the other

global study, *Doing Business*. As highlighted above, the ITF compliance requirements could be significant, both to small and big businesses. The latter would have more people to cover in their reports to the ITF whilst the former, even if they have few employees, may be burdened with ITF compliance at the expense of existential business issues. Alternatively, a small size employer is

likely to take a pragmatic view and prioritise existential business issues, than ITF compliance. The recently signed **Finance Act 2019** has eased tax burden on small and medium enterprises (SMEs), for example by prescribing exemption or preferential tax rates.¹¹ However, the **ITFAM** sought to bring smaller employers (having at least 5 employees) into the ITF compliance net: it imposed compliance obligations on small time employers that in other climes, ought to be beneficiary of government grants. Whilst 'coverage creep' to smaller businesses would be less objectionable in the case of pensions, **section 2(2)(3) Pension Reform Act 2014** raised the compulsory pension compliance threshold from employers having five (5) employees to employers with fifteen (15) employees. Meanwhile because of the ostensible benefits, subsidiary legislation allowed voluntary participation by employees of employers having three (3) employees;¹²

⁶ The TP of every employer must clearly provide the employer's areas of emphasis for any particular period. The purpose of a TP is to define strategies, methods and processes that will be utilised to achieve the training provided, objectives of employee training, types of training and faculties, the methods of implementation and the duration of training.

⁷ Pursuant to section 7 ITFA, albeit ITFAM has now reduced the maximum refund amount to 50% from 60%. In practice, employers may not get the maximum refund threshold if the ITF is not satisfied that they have covered all the areas of training needs. It is not just based on the amount spent on training.

⁸ Essentially, to qualify for refund from ITF, an employer must have satisfied the following requirements: (a) Full payment of the training contribution for the year of claim together with supporting documentation (receipts); (b) Each training programme, based on identified training needs, must be submitted to ITF for approval as prescribed. For example, for Apprentice Training, a formal letter of approval for the programme should be attached with Form 4A to the nearest Area Office of ITF, two weeks before commencement of training; (c) Annual approval of learning and development by ITF and furnishing of satisfactory evidence of training to ITF (not less than 15% of the employer's total workforce must be trained annually for employer eligibility for a refund); (d) Employers timely filing their refund claims on time (by or before June 30 for the preceding year) and in the prescribed format; (e) For offshore trainings, the employer must also provide satisfactory evidence in respect thereof; and (f) All payments shall be by e-payment solutions.

⁹ For some context, see '**Eating the Frog of Multiplicity of Taxes**', *Taxspectives* by Afolabi Elebiji, THISDAY Lawyer, 21.10.2014, p.15 (also available online at Thought Leadership page at www.lawlegal.com): "It is no longer news that in the *Paying Taxes 2014* survey results, Nigeria's rating slipped to 170th (out of 189 countries) from 155th (of 185 countries) in the 2013 results. *Paying Taxes*, ... monitors total tax rate (TTR), compliance time (CT) and number of payments (NoPs) of a typical small company in the economies surveyed. While Nigeria's TTR (33.8%) beats the African average of 52.9%, she significantly lags the African CT average (956 vs 320 hours) and NoPs (47 vs 36.1). Indeed Nigeria's 47 payments is 42nd on NoPs in Africa, beating only 11 countries, none of which includes 'peer' economies like South Africa and Egypt. That Nigeria is last in Africa (53rd position) on CT, gives real cause for concern. Having followed *Paying Taxes* for a while, I note that Nigeria's 2014 CT (956 hours) 'improved' from 1,120 hours in the 2006 survey results. Meanwhile, Cameroun with 1,300 hours CT in 2006 has leapfrogged to 630 hours in the 2014 results!"

¹⁰ In the 2020 results, whilst Nigeria's CT has improved to 343,365 hours, her 48 NoPs is largely constituted by 27 Labour tax related payments, compared with 2 profit tax payments and 19 other taxes payments: <https://www.pwc.com/gx/en/services/tax/publications/paying-taxes-2020/overall-ranking-and-data-tables.html> (accessed 08.02.2020). Nigeria's 156th ranking out of 190 countries could have been higher without ITF compliance requirements.

¹¹ For example "small" companies with less than N25 million turnover are exempted from paying corporate income tax (CIT), and also from VAT filing obligations (charging and remitting VAT); "medium" companies with over N25 million but below N100 million turnover are subject to only 20% CIT rate (compared to the generally applicable 30% CIT rate), etc.

¹² For a more detailed discussion, see Gabriel Fatokunbo, '**Reformations: Can the Pension Reform Act 2014 Go Further?**', *LeLaw Thought Leadership Insights*, 04.2020 available at: www.lawlegal.com. Pursuant to the PRA, **Guidelines for Micro Pension Plan 2018 (MPP)**, aims to cover employees of businesses with less than 3 employees and self-employed persons.



- *The ITF is more of a clog in the wheel and unsuited regulator of specialist training:* It is preposterous that in these days and age, employers would be required to provide prior notifications of training programmes to ITF before they could qualify for refunds or the quantum of refunds that ITF would grant to them. It is foreseeable that business exigencies may necessitate sending staff for training at short notice, including sometimes when the employer becomes aware of a training programme, close to the deadline. It is also a notorious fact that the wheels of public sector service delivery moves slowly in Nigeria. If as contemplated by ITFAM, all employers having at least 5 employees in Nigeria were to be ITF compliant, will the ITF be able to discharge its regulatory functions effectively in such scenario? Even if it were to leverage technology like the FIRS does, it would probably need to massively increase its personnel numbers – to solve an arguably unnecessary problem. Finally, given the specialised knowledge, cutting edge expertise and fast moving (obsolescence) trends in many sectors, what capacity does ITF have to evaluate the adequacy or otherwise, of their training programmes? In the circumstances, the ITF as regulator is most probably lagging behind its regulated entities, especially in specialist sectors.
- *ITF presumes that on the job training is not a significant contributor to human capital development:* The requirements for claiming refund of

employers' contribution from the ITF does not give the necessary recognition to on the job training. Rather it emphasises formal, almost classroom type (offsite and onsite) training, by stipulating evidence of training and receipts etc as part of documentation requirements. Meanwhile, on the job training vide observance and practice can be most effective modes of training in some sectors. ITF's one size fits all's prescriptions in this regard are therefore unrealistic;

- *'Lean' government considerations:* Globally, lean government focused on creating a business friendly environment towards their optimal contribution to the economy is becoming the more popular regulatory model. In recent history, the Federal (FG) Government has at one time sought to streamline its ministries, departments and agencies (MDAs). Maybe the functions of the ITF

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could be performed by agencies such as the National Directorate of Employment (NDE)? Can ITF not be rationalised/merged with agencies under the Ministry of Labour and Productivity, such as NDE and/or the Small and Medium Enterprise Development Agency of Nigeria (SMEDAN)?;

- *Government should focus on developing public sector workers:* It creates a moral burden for government that has not made an excellent showing in the training of its own public sector workers to seek to regulate the training of private sector workers. If the FG were to focus on human capital development in the public sector, it would have set a great example for private sector players (who by the way, have enough business rationale to develop their staff), to follow;
- *Government can fund ITF's interventions from corporate and other tax sources:* Doubtless, the government may want to continue ITF's interventions like the Students Industrial Work Experience Scheme (SIWES) in line with its Social Investment Programme (SIP). However, it can be done by budgetary allocations, which always reflects government's priorities. Instructively, no employer is directly mandated to fund the FG's SIP initiatives like N-Power, social transfers and school meals – these are funded from the budget. It is also trite that businesses that are not overly burdened with regulation are likely to be more profitable and therefore pay more taxes from which government would fund its budgets;
- *Many employers are already helping with human capital development beyond their organisations:* Most of the major employers already fund students' scholarship and bursary programmes, 'adopt' some public schools/provide other episodic significant assistance, undertake or sponsor apprenticeship schemes, offer internship and National Youth Service Corps (NYSC) members work experience amongst other corporate social responsibility (CSR) initiatives that they do not benefit from directly. Some of their staff that they invest heavily in their training and

development leave to work for other employers (including sometimes the public sector), or to start their own ventures. All these are examples of laudable contributions by employers. Not the least is that all corporate employers also pay 2% of their assessable tax to the coffers of the Tertiary Education Trust Fund, via the FIRS.¹³ Rather than granting tax deductibility for ITF contributions, would it not be more efficient to scrap same or at least totally exempt employers from contributing if they can show in previous year that fully trained their employees?;

- *Refund is an acknowledgement that ITF contributions is unnecessary/inefficient:* In 2017, NSITF reimbursed N6.4 billion to 430 companies.¹⁴ As mentioned earlier, given the strong imperatives for employers to develop their staff, provision for refund in the *ITFA* smacks of buyer's remorse – that the contributions should not have been mandated in the first place;
- *Nigeria has liberalised its investment environment:* Further reinforcing the thesis that the ITF is an anachronism is the fact that Nigeria has been liberalising its investment environment since the mid-1980s. The time of “command and control”, paternalistic thinking driven economy, typified by strict foreign exchange controls, restriction or curtailing of foreign investments into certain sectors, excessive regulatory burden, etc is gone. ITF is part of that obsolete architecture and ought to be either removed or at least revamped, given our current investment promotion stance.
- *ITFA/ITFAM may be unconstitutional:* Whilst conceding this may be quite a stretch, ITF contributions is arguably oppressive, expropriatory and therefore unconstitutional as it entails government forcefully taking money from employers' whether or not they

train their staff.¹⁵ Aggrieved employers may have a credible narrative in challenging the legislation as unconstitutional for being oppressive, and not an acceptable exception to justifiable government expropriatory action.¹⁶ Apart from the fact that government's *locus standi* to complain about the adequacy of employers training of their own employees may be suspect, the courts may not be persuaded that mandatory employer contributions to the IFT is the best solution in the circumstances.

Conclusion

Viewed against government's recognition of the need to promote a free market economy as a fulcrum for accelerating Nigeria's development - where growth and expansion would largely be driven by innovation and competition - the ITF idea has become outdated. Today's global reality is that private sector capacity development initiatives, rather than public sector led variants, are more optimal and impactful and should therefore be promoted. Since employers with the more value-adding staff development plans will attract, motivate and retain the best talent, and consequently enjoy competitive market advantage, there is no need for any 'extraneous' regulatory interventions *a la* ITF in the business landscape.

It is unreasonable to posit that absent the ITF, employers are not incentivized enough to adequately train their staff, when they know the impact of training on their brand equity. They also want to entrench their market positions hence they institute policies and desire awards that acknowledge them as employers of choice. Again considering a wide array of alternative policy instruments available to government, the case against IFT contributions become more compelling.

It is respectfully submitted that the ITF has outlived its usefulness and should therefore be scrapped, or at the very least be restructured to make the counter-

arguments against its utility (as discussed above), less forceful. Government should focus more on creating the requisite enabling environment for exceptional operational performance by employers. This will in turn lead to increased tax contributions to the public *fisc*, for government spending accordingly, on determined priority areas.

¹³ It has been argued that the 0% CIT rate applicable to small companies does not exempt them from payment of TETFund tax, since the *Finance Act 2020* did not expressly grant the latter exemption.

¹⁴ See Friday Olorok, '*ITF Spends N6.4bn on 430 Companies*', *The Punch*, 8 March 2018: <https://www.pressreader.com/nigeria/the-punch/20180309/281887298820309> (accessed 10.01.2020). According to the report, the ITF facilitated the training of more than 90,000 Nigerians on employability and entrepreneurship and an additional 37,000 from 1,454 organisations through its National Industrial Skills Acquisition Development Programme, Women Skills Empowerment Program and Skills Development Program for Youths in Construction Trade in 2017.

¹⁵ Chapter IV, 1999 1999 Constitution of the Federal Republic of Nigeria as amended (1999 Constitution) enshrines fundamental human rights for Nigerian citizens. Sections 43 and 44 1999 Constitution, provides against expropriation of immovable property with exceptions, including when required in the public interest, access to adequate compensation and the courts.

¹⁶ A strong counter-argument though is that section 44(2)(a) 1999 Constitution provides for carve-out for “general law” “for the imposition or enforcement of any tax, rate or duty”. ITFA/ITFAM can then be argued to be such law. However, the core of our thesis is that these legislation are “unfair” for mandating ITF contributions.

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