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The National Pensions Act, 2008 (Act 766) and Challenges of Pension Fund Administration in Ghana

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***Abstract:** The recent reformation in Ghana's pensions space introduced the three-tier pension scheme underpinned by the National Pensions Act, 2008 (Act766) under the regulatory authority of the NPRA. Seeking to redress inherent challenges, the transformational shift effected by the former yielded the incorporation of private sector through inclusion of approved corporate trustees, fund managers, fund custodians and other service providers. However, despite the new scheme's attenuation of key lapses and challenges of the previous regime, there still exist predicaments that are reflective of the later. By employing secondary and other forms of empirical data, this research explores significant shortfalls observed in the management of various schemes (DB and DC) intertwined with sections of the Act 766 that require reconsideration. The upshot of this research reveals the retarded performance of the Defined Benefit Scheme as opposed to the stupendous attainments of the Defined Contributory Scheme. Findings pertaining to inadequate coverage of schemes, perceived bureaucracy, payment of benefits, monthly remittances, and defaulted employers as well as exclusions from the three-tier pension scheme, suggest that extra work must be embarked on to make pension delivery effective and efficient. The paper therefore proposes rudimentary review of certain controversial provisions under the Act 766 coupled with strict adherence to various guidelines pertaining to the regulatory and administrative functions of stakeholders.*

***Keywords:** Defined Benefit Scheme, Defined Contributory Scheme, National Pensions Regulatory Authority, Pensions Act, 2008 (Act 766), Approved Corporate Trustees.*

1. INTRODUCTION

The history of the Ghanaian pensions space started with the traditional social security establishment that was predominant among rural dwellers during the pre-colonial era. According to Mensah (2013), the former enabled the extended family to cater for the aged,

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indisposed and the demised. The first formal pension arrangement enforced by the 1940s colonial Development and Welfare Act was instituted to phase out the preceding traditional arrangement (Dankwa, 1997). This Pensions arrangement as posited by Kpessa (2010) was only beneficial to public sector workers who demonstrated diligence at work, and loyalty to colonial officials of that era. However, Dankwa (1997) underscores that, due to its discriminatory characteristic, the Colonial Development Act (Act 1940) got replaced by the CAP 30 scheme. This scheme was non-contributory, and it offered the same opportunity to expatriates and indigenes. Unlike the former, the CAP 30 rewarded loyalty to one's work and gave employees the opportunity to attain voluntary and compulsory retirement at age forty-five and fifty respectively (Kumado and Gockel, 2003).

Howbeit, since the scheme was solely financed by the government, the British government then was financially overburdened and this consequently led to a policy reformation that birthed a new pension scheme called Provident Fund in 1965.This, unlike the previous schemes, covered both formal and informal sector employees. However, due to the negative impact of rising inflation and interest rate fluctuation, Labor Unions and other beneficiaries agitated for the replacement of the Provident fund (DC) with a DB scheme that pays retirees' benefits in a form of monthly annuity (Mensah, 2013; Kpessa, 2010). In 1990, Darkwa (1997) asserts government of Ghana's establishment of the Social Insurance Scheme which allowed contributors to qualify for Pensions benefit after contributing for a minimum of 240 months (20years). In respect of this new scheme, voluntary and compulsory retirement age was 55years and 60years respectively, whilst the major contingencies; old age benefit, emigration benefit, survivor's benefits, and invalidity benefit, were integral components (Adjei, 2000).Withal, workers such as Senior Members of Universities, Soldiers, Foreigners in Diplomatic Missions, Prisons Service, and the Police Service, according to (PNDC Law 247) were excluded in this pensions arrangement. Nevertheless, (Osei, 2005) elucidates that, due to the nature of their work, these categories of workers were placed under a CAP 30 Scheme.

Ascribed to criticisms from retirees, trade unions, contributors vis-à-vis other stakeholders, with respect to how SSNIT was managing the scheme, the Three-Tier Pension Scheme was developed under the new pensions Act (Act 766) and its associated regulation (L.I 1990). Aidoo (2008) stipulates the scheme is a three-tier structure with the involvement of private sector in respect of management and the inclusion of a regulatory body called the National Pensions Regulatory Authority. It encapsulates a defined benefit scheme called mandatory Basic National Social Security Scheme (Tier 1) and a mandatory Occupational Pension Scheme (Tier 2) as well as a fully funded Provident Fund and Group and Personal Pension Scheme (Tier 3).

Over the years, Ghana has taken keen interest in implementing reforms to benefit formal and informal sector employees to have robust pension plan and effective financial back-up. Although retirement is a phase an individual is supposed to attain rest from active work, some retirees and their previous employers never make contributions in their days of active work whilst many retirees usually go back to work due to insufficient pension benefit. Therefore, it is essential for pensioners to have an effective retirement income security system. In accord

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with (The World Bank Group 2022), by 2050, the number of pensioners across the globe will increase from 10% to 20%, of which nearly 80% (1.3billion) will be immigrants of low-income countries. This raises a significant question about how countries (especially low-income ones possessing only 33.3% formal retirement arrangement for their entire population) are prepared in terms of policy reforms and implementation to address the associated challenges and burdens on their economies. Unlike Nigeria which according to Enzenwa and Obiagwu (2020) has usually been unable to effectively fulfil payment of pension benefits to retirees, Ghana has been faithful in that regard. However, the latter's major challenge as addressed by NPRA (2019) and Obuobi (2017) is the huge pension debt accrued, a consequent of failure of some government and private institutions to fulfil their statutory monthly remittance of pension contributions. Moreover, research unveils employers are more compliant with payment of Tier 1 contribution as opposed to Tier 2 despite the two being mandatory. It is against this backdrop that this paper aims at unravelling considerable insufficiencies in key arrears of pension management i.e., investment, coverage, exemptions, bureaucracies, defaults and making propositions for future reforms.

Conceptual Framework

The Concept of Pension

Pension refers to the payments received by retired private and public sector workers in a form of annuity and (or) lumpsum (Mitchel and Fields, 1996). This arrangement aimed at providing income for retirees from the beginning of retirement to the death of beneficiaries is by law an integral part of the contract of employment. According to Wikipedia (2022) and Encyclopedia Britannica (2019), pension is a pool of fund collected from contributors, from which periodic income payments are made to retirees who meet all conditions in terms of age, period of service, disability, or invalidity. In furtherance, pension schemes are legally bound contracts that explicitly outline arrangements to provide sickness and disability benefits as well as survivors' benefits. This apportions to service providers and contributors, legal responsibility failure of which is tantamount to legal implications. Additionally, NPRA (2020) and SSNIT (2021) give four main classifications of pension, namely, monthly pension, invalidity pension, survivors pension, lumpsum benefits, and emigration benefits. To qualify for monthly pension, one must contribute to Ghana's first Tier for a minimum period of 15years or 180 months in aggregate, whether he or she retires at age 55 (voluntarily) or 60 (Compulsorily). In respect of invalidity pension, one qualifies provided he/she has contributed to the scheme for a minimum of 12 months within the last 36 months prior to the occurrence of the invalidity. Survivors' benefit is paid to a deceased person's validly nominated beneficiary, and where there are no nominated persons, dependents are paid the benefits in conformity with the intestate succession Act, 1985 (PNDC Law 111). A foreigner who has contributed for less than 180 months under the Tier 1 and 2 and has not reached retirement age but intends to leave Ghana permanently, is paid emigration benefit.

Defined Benefit Scheme

This is a social insurance plan that basically employs the principle of risk polling and solidarity. Also, it is buttressed by pay-as-you go and partial funding methods. This plan establishes a defined formula based on which retirees' benefits are determined. As postulated by Backer et

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al (2006) and SSNIT Website (2022), pensioners are entitled to monthly annuity payments subject to periodic validation till they die. Traditionally, a defined benefit plan has its monthly pension being a function of age at retirement, salaries on which contributions are made, and the total number of months of contribution payments. The scheme's contributions are usually employer driven and are paid by an employer.

Defined Contribution Scheme
A defined contribution scheme has a varying retirement benefit subject to profitability of the choice of investment. World Bank (1994) opines that DC schemes allow an employee to contribute a specific percentage of the latter's basic salary periodically. Contrary to Defined Benefit schemes, DC schemes' benefit is a function of total contributions made plus return on investment. With DC Schemes, accounts are created for individual contributors to which regular contributions are remitted and are invested in different asset classes approved by the regulatory Authority. According to NPRA (2020) and (PRA 2014), DC contributors have the free will to transfer (port) funds to different administrators, and as well, the scheme has a higher potential for coverage.

Assessing Key Components of the Pension Reform
Pension fund investment
A major foundation of pension fund management in the world is the advancement of savings account balance of contributors via investments, entrenched by approved regulatory guidelines. Congruent to this, section 67, 68 and 69 of Act 766 guide stakeholders on the periodic formulation and review of investment policies, permitted investments, and external investments, respectively. Section 175 of the pensions Act stipulates that a pension fund trustee shall invest received contributions to obtain safe and fair investment return for contributors. In furtherance, section 176 sub-sections (a-i) accentuates that the various asset classes the funds shall be invested in, encompass debentures, bonds, ordinary shares, redeemable preference shares, and various debt instruments guaranteed by the Bank of Ghana, government of Ghana including other credible institutions.
Over the past decade, the retarded performance of the DB scheme (a major component of the three-tier pension scheme) under the administration of SSNIT and what some perceive as insufficient pension benefits among others, have on occasional basis triggered the agitation of some stakeholders including the Trade Union Congress (TUC). On the other hand, Dostal (2010) argues that Nigeria's pensions sphere lacks transparency besides lack of direct involvement of contributors in respect of pension fund investment decisions. Regardless of the similarities in the pension schemes of the two countries, Ghana's pensions space is a type that ensures transparency through release of annual management and investment report by the regulator (NPRA), SSNIT, corporate trustees, and custodians. Administrators of the funds generate annual statements which are usually given to contributors upon request. Howbeit, research contends that reports on investment returns must be made readily available to contributors via websites, magazines, newspapers, and the like. Moreover, a school of thought posits that investment of about 75% of pension fund into government of Ghana securities irrespective of being risk-free must be assessed and amended. This, according to Enzenwa and

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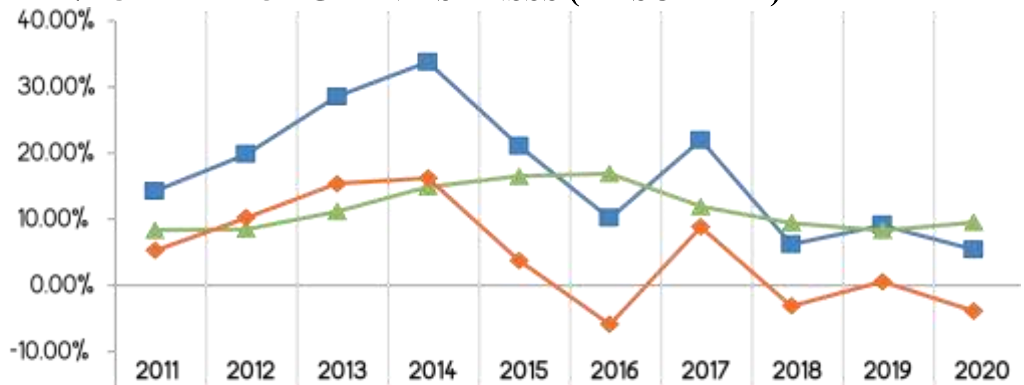
Obiagwu (2020) is the case in Nigeria where 73% of pension fund is invested into Federal Government's treasury bills and bonds.
NPRA (2020), reveals the percentage composition of funds of the three-tier pension scheme and its enviable performance from 2016 to 2020.The BNSSS (Tier1) and the private scheme (Tier 2 and Tier 3) constitute 34% and 66% respectively. The entire fund attained an average annual growth of 21.8% from 2016 to 2020. As of 2020, the rate of return on investment for the BNSSS was -0.32% (real) and 9.57% (nominal), and the overall growth of the entire fund (GHS33.4 billion) was 27% as juxtaposed with 21% in 2019. This shows that Ghana's pension fund is growing significantly as it represents 7.5% of the country's GDP (OECD, 2020). Return on investment is correlated positively to the growth of pension funds everywhere. Being cognizant of the time value of money, Ghana's DB scheme considers inflationary effect by adhering to periodic review of the amounts paid to pensioners; indexed to wage inflation and projected price inflation (Section 80 of Act 766; NPRA Report, 2021). This however does not holistically counter the fact that inflation depletes a substantial percentage of the fund. Additionally, the DC scheme's constant exposure to periodic surge in inflation which in turn causes a cumulative recede in the value of contributors' savings is worth consideration. To ameliorate the negative impact of inflation on the funds, stakeholders whilst focusing on diversification must increase the quantum of funds invested in portfolios such as real estate, infrastructure, and commodities such as gold and diamond which are pivotal drivers of the economy and major hedging instruments against inflation and exchange rate fluctuations. Moreover, owing to tax exemptions on pension funds, with respect to DC schemes, fund managers should tilt the asset mix towards tax-disadvantaged securities such as corporate bonds and in respect of DB schemes, benefits yet to be paid to retired beneficiaries as well as benefits under management for active contributors should be hedged through immunization strategies and portfolio insurance strategies correspondingly (Bodie, 1988).The recent unprecedented depreciation of the Ghanaian cedi against the US Dollar, a consequence of COVID-19 and the Ukraine-Russian war, causing various financial experts to suspect the possibility of government's debt restructuring, calls for a substantial percentage of the pension fund to be invested in major foreign currencies in foreign markets.

RETURN ON INVESTMENT OF GHANA'S BNSSS (DB SCHEME)



	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Nominal return	14.81%	20.50%	29.48%	34.86%	21.84%	10.55%	22.74%	6.50%	9.48%	5.73%
Average Inflation	8.73%	8.89%	11.65%	15.45%	17.13%	17.52%	12.38%	9.85%	8.68%	9.93%
Real Return	5.59%	10.67%	15.97%	16.81%	4.02%	-5.93%	9.22%	-3.05%	0.74%	-3.81%

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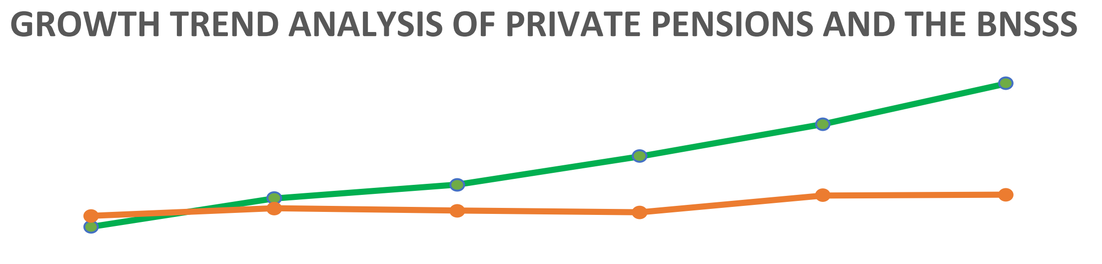
Source: **SSNIT ANNUAL REPORT, 2020**.



	2016	2017	2018	2019	2020	2021
Private	6,792,946,261	11,023,178,469	13,013,606,576	17,262,269,255	22,019,398,338	28,018,717,081
BNSSS	8,405,594,000	9,518,287,000	9,187,580,000	8,929,300,000	11,440,244,000	11,544,270,000

Source: **NPRA ANNUAL REPORT, 2021.**

Inadequate coverage of schemes

Section 6 of the pensions Act, 2008 (Act 766) mandates the Authority to regulate and monitor the operations of the three-tier pension scheme and ensure effective administration of pensions in the country. Also, in conformity with sections 7(i) and (k) of the former, it is incumbent on the Authority to sensitize the formal and informal sectors of the economy on matters of the schemes and promote development of the pensions sector. Aside the Authority, it is also the duty of approved corporate trustees and the Social Security and National Insurance Trust to carry out periodic sensitization programs to broaden the scope of pensions coverage across the country. The mandatory nature of the Tier 1 and Tier 2 presupposes all formal sector employers and employees are registered. However, there still exist employers and employees who have contravened. According to (NPRA Annual Report, 2021) the percentage of coverage for formal and informal sector is 51% and 4% respectively. NPRA Annual Report (2020) adds that there were 1.6million and 2.1 million contributors enrolled with the Basic National Social Security Scheme (Tier 1) and the mandatory Occupational Private Pension Scheme (Tier 2) respectively. Again, NPRA Annual Report (2021) reveals about 1.7million and 2.5 million contributors for Tier 1 and Tier 2 proportionately. A major determinant of the disparity between contributors of the BNSSS scheme and the mandatory Occupational Private Pension Scheme (Tier 2) centres on an age restriction of a maximum of 45 years on joining the former, as against the zero-age restriction on joining the later. The total number of 4.2 million contributors under the two mandatory pension schemes as of year ending 2021, represents just about 29.8 % of Ghana's total labor force;14.1million (World Bank 2021). This denotes that an extensive work must be embarked on to get the remaining 73.8% of the population (Ghana Statistical Service, 2022) that encapsulates the total labor force to actively contribute (if in default) or enrolled (if unenrolled). (Obuobi, 2017; Ezenwa and Obiagwu, 2020), highlight the gross misconception and skepticism with which informal sector workers (largest constituents of labor force) frown on pension enrollment and contribution. However, Abdulazeez (2015) and Obuobi (2017) postulate that whilst there has been a significant decline in such canker which synchronously has ensued in increased enrollment, a consequential proportion of the informal sector has still

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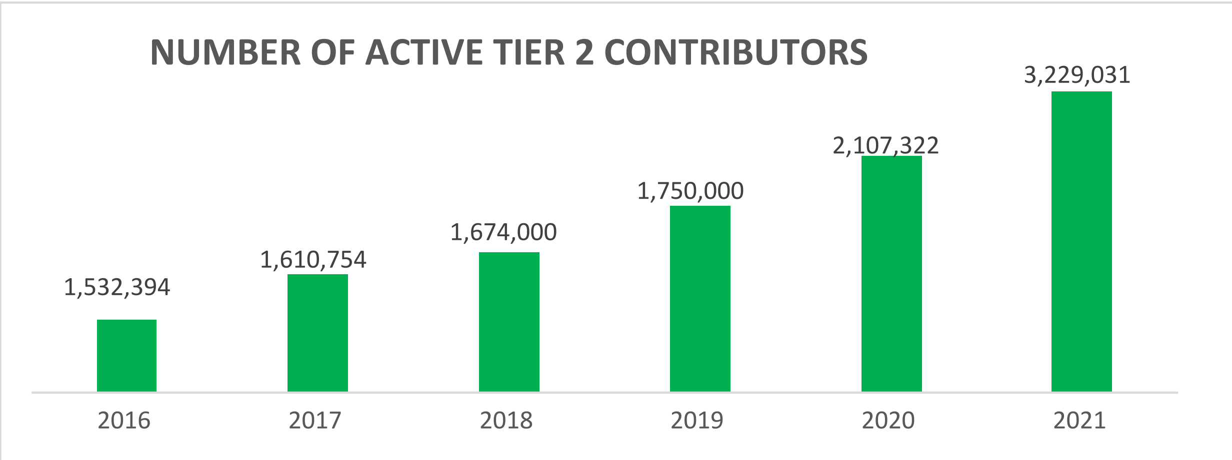
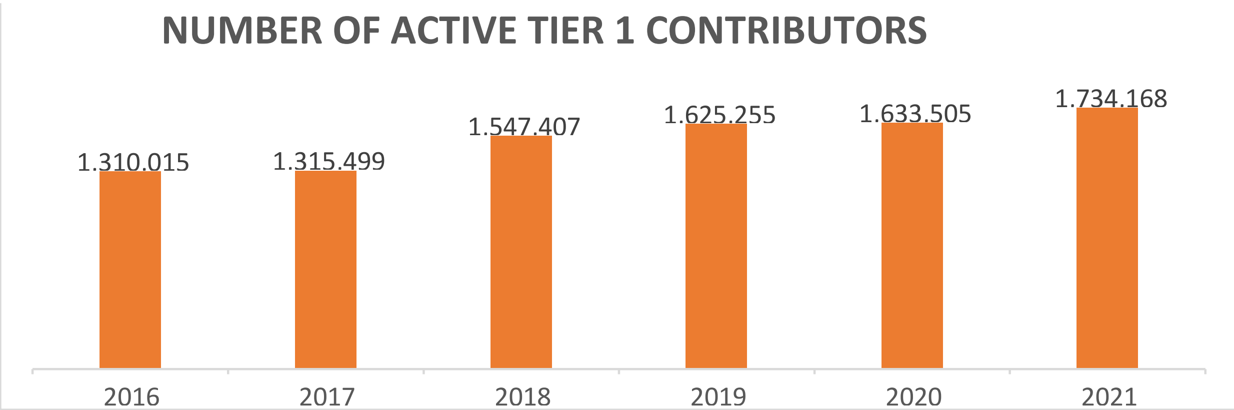
been adamant. On the other hand, (Ezenwa and Obiagwu 2020) blame the misconception and knowledge gap on institutional incompetence in Nigeria, whilst Obuobi (2017) contrastingly acknowledges the invaluable contribution of Ghana's regulator (NPRA) in ensuring some increase in membership of the private schemes (Tier 2 and Tier 3) from 1.5million in 2016 to 2.1million in 2020.This corroborates (NPRA Annual Report 2016; 2017; 2018; 2019; 2020) which construe that the Authority embarks on series of sensitization activities by collaborating with corporate entities, educational institutions, professional associations, trade unions and the media. Regardless, a lot of work must be done to increase coverage in the foreseeable future.





Source**: NPRA ANNUAL REPORT, 2021**.

Perceived Bureaucracy

In the Ghanaian Pensions space, there are two major pension fund administrators namely, The Social Security and National Insurance Trust (SSNIT) and Approved corporate Trustees who administer the BNSSS (Tier 1) and private schemes (Tier 2 and Tier 3) respectively. These two are regulated by the National Pensions Regulatory Authority (NPRA). According to Section 120 of the Act 766 (2008), a trustee licensed under the Act and approved by the Board, shall manage occupational pension schemes, provident fund schemes, personal pension schemes, and other privately managed pension schemes. The Authority, SSNIT, and approved corporate trustees are instructed by law to receive and investigate complaints of irregularities with respect

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to pension administration and ensure that grievances and complaints from pensioners, contributors, and other stakeholders are executed within the right timeframe (Act 766). As known to be inherent of most administrative systems worldwide, resolution of complaints sometimes delays since it involves presentation of evidence by involved parties, investigations, documents perusal, subsequent escalation to other hierarchies or sometimes the court, etc. However, contrary to the exposition made by Abdulazeez (2015) and Fapohunda (2013) concerning the lack of requisite human capacity coupled with overlap of responsibilities of stakeholders within Nigeria's Pensions industry, Ghana's as posited by (NPRA Report 2021) has experienced efficiency due to the distinct un-interfered performance of duties by institutions involved. That notwithstanding, one major exacerbator of bureaucracy is the ineffective use of digital complaint handling. This is substantiated by situations where complainants get entangled in the stress of having to walk from distant destinations to offices of pension institutions whilst Apps, chatbots, pension dashboards, as opined by (OECD 2017) could be adopted to ameliorate the situation just as it is in the UK, Australia, and Canada.

Payment of benefits, monthly remittances, and defaulted employers

Section 62 (1) and section 96 (1-4) of the pensions Act, 2008 (Act 766) mandates an employer (whether public or private) to deduct a total contribution of 18.5% of the basic salary of an employee, out of which 13% is contributed by the employer whilst 5.5% comes from the employee. Out of the total, an employer remits 5% to an approved corporate Trustee (Tier 2) and the remaining 13.5% is paid to SSNIT. The later remits 2.5% of the 13.5% to NHIS and keeps the remaining 11% into the Tier 1 account of contributors for investment purposes. Subsection 3 of the above-stated sections (62 and 96) accents the minimum basic salary from which deductions shall be made to be an approved monthly equivalence of the national daily minimum wage. The total number of active establishments (private and public companies that make contributions on behalf of employees) enrolled on the BNSSS has increased from 57,925 (2016) to 75,978 (2021) and that of the private schemes (Tier 2 and Tier3) is currently 65,544 (NPRA Annual Report 2021). However, even though some registered companies might not be operational at a given point in time, as of 2016, a total of 131,547 registered entities (Registrar Generals' Department 2016) proves only approximately 44% were either enrolled with the Tier 1 or there is a higher percentage of enrolled entities some of which have defaulted payments and are classified as inactive. Hence, current data on registered entities might reveal a greater percentage of registered companies are unenrolled with the public and private schemes or inactive contributors (defaulters). Furthermore, despite the statutory instructions, SSNIT Annual Reports (2020) recognize that a section of employers fails to make payments of contributions for a preceding month on the agreed date (14^{th} of the prevailing month) irrespective of the fact that deductions are made. Also, some employers deliberately make deductions based on an amount lower than the actual basic salary of employees. Besides, delayed in validation by some corporate trustees coupled with disregard for expatriate contributions by some employers also leaves much to be desired. Among others, a major cause of delayed validation is some new employees' reluctance in submitting their social security numbers to their employers for updates to be made in respect of payment schedules. To eradicate such canker, the National Pensions Regulatory Authority and, SSNIT embark on routine (onsite and offsite) monitoring and inspection exercise (NPRA Report 2021). Under its

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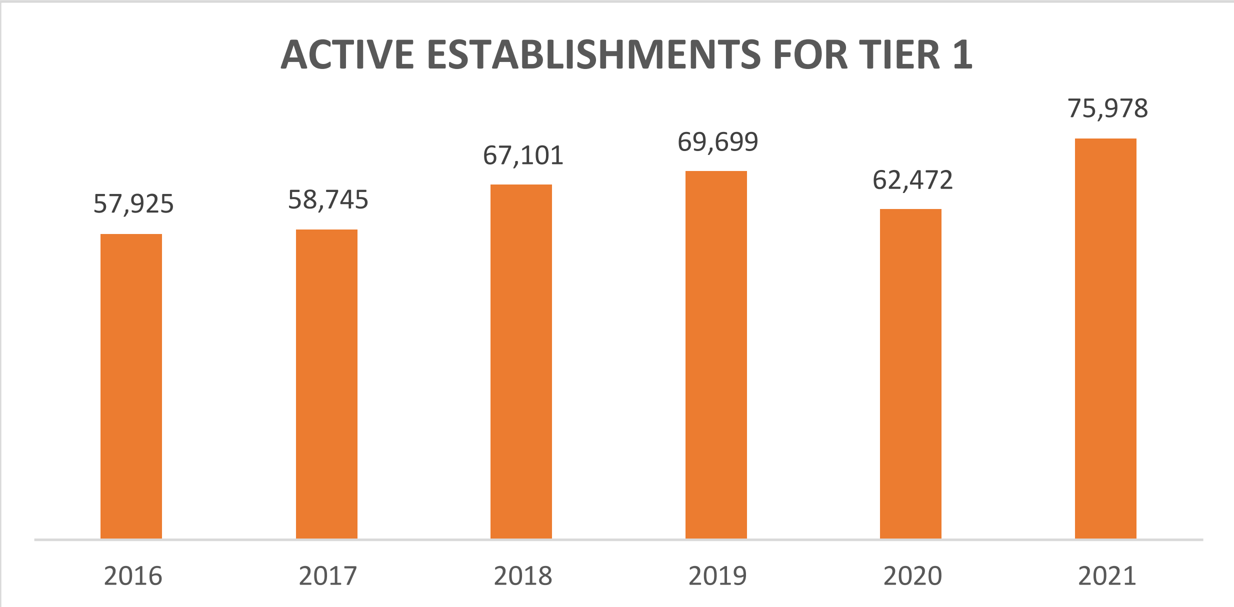
sanctioning regime, Ghana's pensions space enforces the appropriate jurisprudence on defaulting and recalcitrant employers (NPRA Annual Report 2020).

Generally, the new pensions Act, 2008 (Act 766) highlights those offences under sections 83, 84, and 85, civil proceedings under section 86, and priority for payment of contributions and protection against attachment under sections 87 and 88, and these shall be applicable to the Act and its appendages for the mandatory basic social security scheme whilst sections 105 (1-3) is applicable to 2nd tier contributions. For instance, failure to remit monthly contributions attracts a penalty of 3% of the monthly contribution due (applied cumulatively for the period of default) in the case of Ghana (Regulation 102 of L.I 1990), and not less than 2% of the defaulted monthly contribution in the case of Nigeria (Ezenwa and Obiagwu 2020). Owing to its (surcharge) relatively infinitesimal nature, recalcitrant employers may choose default over borrowing at a higher cost in the financial market, invest the defaulted amount and use part of the returns to offset the 3% surcharge. As it (surcharge) has the propensity of promoting corruption and exacerbating the act of default, Olunwajo (2013) admonishes an upward adjustment of the surcharge for Nigeria's pension space regardless of its unlimited upper cap. This raises a concern about the 3% flat rate charged in Ghana. As attested by World Bank (2008), the introduction of risk-based supervisory framework according to NPRA Report (2021) coupled with the existing sanctioning regime would enhance mitigation of such risks as aforementioned.



Source: **NPRA ANNUAL REPORT, 2021**.

Exclusions from the scheme

According to section 31 of Act (766), officers and men of the Ghana Armed Forces are exempted from pension contributions. Additionally, the CAP 30, a non-contributory pension scheme embedded in No.42 of chapter 30 of the Pensions Ordinance, still exempts civil servants, Armed Forces, Prisons Service, Police Service, Fire Service etc., from contributing towards their pension benefits (Parliament of Ghana, 2019). Although some of these

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beneficiaries of the CAP 30 scheme such as Research Fellows and University administrative staff contribute 10% of their basic salaries to the scheme, monthly pensions are paid from the consolidated fund whilst the employees' portion is used to pay a lumpsum at retirement. No wonder some beneficiaries under the three-tier scheme raise allegations concerning the relatively rewarding nature of the CAP 30 thereby making them feel discriminated (Ashidam, 2011). These exemptions put a tremendous financial burden on government's purse as it solely funds the pension contribution of the exempted, from the consolidated funds. Moreso, this contravenes provisions of the new pensions Act (Act 766), as it emphasizes the need for unification of all parallel pension schemes. Putting all the pension schemes under one umbrella and allowing all workers to contribute to their own pension benefits yield equity and equality. A similar exemption tolerated by Nigeria is what (Ezenwa and Obiagwu, 2020) term as discriminatory and a blatant violation of the principles buttressing pension regulation. As one of the key mandates of Ghana's pensions regulator, unification of pension schemes to include the exempted parties, was expected to be executed by end of 2021 (Brobby cited by Parliament of Ghana 2019). Also, (Atta-Krufi cited by Parliament of Ghana 2019) recognizes unification to be in the predisposition of catalyzing sustainability in the pensions space, hence NPRA's preparedness for active consultations with stakeholders to make it a reality after cabinet's approval.

2. CONCLUSION

Ghana's pensions industry continues to be a major contributor to the nation's fiscal, economic, and social transformation. The unprecedented milestones achieved, owing to the pension reforms of early 2010 is worthy of commendation. The reformation resulted in the emergence of the three-tier pension scheme and promulgation of the Pensions Act, 2008 (Act 766). Fundamentally, the Act was enacted to provide legal guidelines for prudent performance of stakeholder-responsibility. It is in this regard that the paper unraveled and dissected notable weaknesses in the management of pensions besides the provisions of the Act that impedes the realization of its objectives. With its demonstrable willingness to get these plights rectified, the NPRA should address the contradictions in the Act, and establish mechanisms of ensuring diligence, transparency, and professionalism as regards responsibilities of all stakeholders in the industry.

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