

Agreement between NSITF and NECA on the implementation and administration of the Employee's Compensation Act, 2010

Newsletter

The Nigeria Social Insurance Trust Fund (NSITF) and Nigeria Employers' Consultative Association (NECA) have signed an Agreement on the implementation and administration of the Employee's Compensation Act, 2010 (ECA or "the Act"). The Agreement, which was recommended by a Joint Committee of NSITF and NECA, will guide the administration of the ECA from 1 January 2017.

The highlight of the Agreement is the definition of "payroll" for the purpose of computing employer's contribution to the Employee's Compensation Fund (ECF or "the Fund"). Under the ECA, employers are required to make a minimum monthly contribution of 1% of their total monthly payroll to the ECF. However, the term "payroll" is not defined in the Act. The base for ECF contribution has, therefore, been a point of dispute between NSITF and employers since the enactment of the ECA.

In 2011, NSITF and NECA held a series of interactive and enlightenment sessions with a view to resolving this issue, amongst others. However, the Guidelines for Implementation issued by NSITF in June 2011 stipulated that ECF contributions be computed on total monthly payroll without defining the term. In the circumstances, NECA issued letters to its members on 6 July 2011, advising them to base their ECF contributions on "1% of Total Emolument, defined as the summation of Basic Salary, Housing and Transport Allowances ("BHT basis"), as against "payroll," which NSITF indicated in its advertorial."

The debate has now been resolved by the Agreement jointly signed by NSITF and NECA as recommended by the Joint Committee.

The Agreement defines "payroll" to mean "remuneration" as defined in the Act, excluding pension contributions, bonuses (performance-related payments), overtime payments, and irregular one-off payments (such as driver's allowance, medicals, 13th month payment, etc.). Section 73 of the ECA defines "remuneration" as *"basic wages, salaries or earnings designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by law which are payable by an employer to an employee for work done or to be done or services rendered or to be rendered; and allowances which include rental, transport, meals and utility or other allowances as may be determined by the Board, from time to time."*

In effect, the new base for computing ECF contribution is a major departure from the BHT basis.

Another important provision of the Agreement is NSITF's commitment to reconvene/set up the Independent Investment Committee and the Medical Board of Inquiry as provided for in the Act. NSITF has also committed to establish a Standing Committee that will review issues that may arise from the implementation of the Act. The Standing Committee will also be required to make appropriate recommendations on issues noted to an Implementation Committee that will comprise the Director General of NECA and the Managing Director of NSITF.

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KPMG Comments

The cost of doing business in Nigeria has skyrocketed over the last one year. The increase in the base for ECF contribution is, therefore, ill-timed, as it will further increase the financial burden of employers and reduce the available cash flow for day-to-day business operations.

Beyond its negative impact on employers' bottom line, the definition of "payroll" in the Agreement also leaves room for uncertainty in the determination of the base for ECF contributions. For instance, it is unclear whether allowances (e.g. leave allowance, housing allowance, etc.) paid annually by some employers to their staff, will qualify as one-off payments to be excluded in determining the total monthly "payroll". It is also uncertain if the monetary value of benefits-in-kind, such as employer-provided meals and official cars, will be excluded from the computation of ECF contribution. The Standing Committee should, therefore, consider clarifying these grey areas, amongst others.

As the ECF is to be managed for the benefit of employees on whose behalf their employers have made contributions to the Fund, the NSITF needs to earn employers' trust by managing the Fund in a transparent and accountable manner. Claims by or in respect of affected employees must also be promptly settled either to the injured

employees or their dependants in the event of any fatality.

The Independent Investment Committee saddled with the responsibility of advising NSITF on appropriate investment decisions, should also carefully evaluate the current economic climate, to ensure that the Fund is invested safely for optimal returns.

Employers are well advised to commence compliance with the new basis for computing ECF contributions to avoid exposure to penalty and interest charges and other sanctions imposed by the Act. They may also wish to explore innovative ways of ensuring proper compensation of their employees, while managing staff cost and achieving regulatory compliance.

In the final analysis, all the stakeholders must consider a return to *status quo* whereby the risks of occupational hazards are better managed by insurance companies at the least cost possible to employers. Equally, employers under such an arrangement will have the liberty to choose their insurers and recovery of claims can be expedited. Furthermore, the arrangement will, on the one hand, help to deepen the insurance industry and make available long term investible capital that the private sector is in dire need of.

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For further enquiries, please contact:

Wole Obayomi

NG-FMTAXEnquiries@ng.kpmg.com

kpmg.com/socialmedia

