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Nigeria – New Pension Reform Law Brings Change for Employers and Employees

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Private sector employees, under certain conditions, will be required to participate in a new Nigerian compulsory contributory pension scheme, under the terms of a new law.

On 1 July 2014, Nigeria's President signed the Pension Reform Act 2014 ("PRA 2014" or the "Act") into law.[1] PRA 2014, which repeals the Pension Reform Act No 2 of 2004, governs and regulates the administration of the new contributory pension scheme ("the Scheme") in Nigeria.

This *Flash International Executive Alert* provides a brief summary of some of the key provisions contained in the version of the Act signed by the President.

Why This Matters

Now Nigerian employees, whether in the private or public sector, will have the framework and means to save in preparation for their retirement and receive adequate retirement benefits as and when due. The Act takes a stronger stance (as compared with the rules under the Pension Reform Act No. 2 of 2004) to protect the participants under the scheme and ensure enough funds are available for them at retirement.

This new statute means, however, that there will be new fiscal and administrative responsibilities on the part of employers in terms of proper documentation, payroll deductions, remittances, etc., as well as new costs tied to employment. Employees participating in the scheme will also see their disposable incomes affected once their contributions, effected through payroll deductions, kick in.

International assignees to/from Nigeria and their employers who are subject to these rules will see their pension-related costs go up. The minimum rate of pension contribution under the previous rules was 15 percent (with employee and employer contributing 7.5 percent each); now, under the new rules the rate is set at a minimum of 18 percent (with contributions from employee and employer rising to 8 percent and 10 percent respectively).

KPMG Note

The version of the Act signed by the President does not provide a commencement date. In such a situation, and pending the possible proposal of a commencement date by the Pension Commission, the date of presidential assent (i.e.,1 July 2014) should be assumed to be the commencement date.

For a more complete examination of the Act, see "[The Pension Reform Act 2014]" (July 2014), published by KPMG Advisory Services in Nigeria, a member firm of KPMG International.

The newly enacted Pension Reform Act, 2014, repeals a 2004 law, and provides for the following (in summary):

- **A higher threshold number of employees for participantion under the new pension plan system.** The minimum threshold for private sector employers to participate in the Scheme is now 15 (previously 5) employees. However, the Act also provides that self-employed persons and private sector employees of an employer that does not meet the minimum threshold, shall be entitled to participate in the scheme, notwithstanding the minimum threshold.

- **An increased rate of contributions.** The Act has increased the rate of contribution for employees and employers to a minimum of 8 percent and 10 percent, respectively. Employers that choose to bear the full pension cost of their employees, will be required to contribute a minimum of 20 percent to the Scheme. The rates remain applicable to monthly emoluments. The Act defines monthly emoluments as "total emoluments as may be defined in the employee's contract of employment but shall not be less than a total sum of basic salary, housing allowance and transportation allowance." (There is some ambiguity about this definition, and we await further clarification.)

- **Taxation of contributions and withdrawals.** The Act specifies that all interest, dividends, profits, investments, and other income attributable to pension funds and assets are tax exempt. The Act does not provide for the taxability of the underlying contribution, for withdrawals that happen before the expiration of five years. The absence of such a provision, suggests that withdrawals made before the end of five years are now tax exempt.

- **Age at which withdrawals from pension fund are allowed.** A holder of a Retirement Savings Account (RSA), on retirement or attaining the age of 50 years whichever is later, can utilize the balance in his RSA Retirement for several specified purposes, as stipulated by the Act.

- **Employers to open up accounts for negligent new employees.** Under the terms of the new law, employers are compelled to open a Temporary Retirement Savings Account (TRSA) on behalf of an employee who fails to open an RSA within three months of the commencement of work for that employer – this was not required under the 2004 Act.

- **Penalties and sanctions.** The new law provides for new offenses and new penalties for those violating the law. The National Pension Commission has been empowered by the Act to pursue non-compliant employers and carry out criminal proceedings against them in cases where said employers fail to deduct or remit their share of the pension contributions within a specified timeframe.

Footnote:

1 For more information on the new pension reform law, see the Web site for the National Pension Commission: http://www.pencom.gov.ng/ .

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The information contained in this newsletter was submitted by the KPMG International member firm in Nigeria. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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