The pension reform Act 2014 has been signed into law by President Goodluck Jonathan. The Act repeals the Pension Reform Act 2004, effective from 1st July, 2014. This means that pension contribution and administration will now be in line with the provisions of the new Act. The new law has brought about some changes to the existing pension scheme as operated under the former law.

The major highlights of the new Act are discussed in the following paragraphs.

Application of the Act
Section 2 of the Act states that the provisions of the Act applies to all-categories of organizations and include the public service at the Federal, State and Local government levels and private sector organizations with a minimum of 15 employees as against the minimum threshold of 5 employees in the 2004 Act. The new Act also allows organizations with less than 3 employees and self-employed individuals to participate in line with the guidelines issued by the National Pension Commission (Pencom).

Comment: There appears to be a drafting error in the above, which has now created a lacuna in the Act as to what constitutes the minimum number of employees an organization, should have before it can be subjected to the scheme.

While Sub-section 2 of the Section requires minimum of 15 employees for an organization to be liable under the Act, Subsection 3 permits organizations with less than 3 employees to participate in line with the guidelines issued by the commission. We believe that the intention was to reduce the minimum threshold to 3 employees from 5 in the old law. We are hopeful that the error will be corrected before a gazette is issued.

Contribution to the scheme
The minimum rate of contribution under the new Act is 8% and 10% of Monthly Emolument for employee and employer, respectively. This is an upward review from the previous 7.5% minimum contribution each, for both the employee and employer. Monthly Emolument has also been redefined to be “the total monthly emolument of an employee as stated in his contract of employment but shall not be less than the total sum of his monthly basic, housing and transport allowances”.

The employer is however allowed to bear the full cost of the contribution to the scheme subject to a minimum contribution of 20% of monthly emolument.
Additional voluntary contributions by employees are also allowed without limit.

**Comments:** The demand for 20% from an employer that is gracious enough to take the burden off the employee is certainly a disincentive. It is hard to believe that this is intentional; hence we view this as another drafting error, which should be corrected before the gazette is issued.

The redefinition of monthly emolument also seems to have widened the base beyond the usual basic, housing and transport allowances to now include all allowances that are guaranteed on a monthly basis. If this is the case, then it means that the increase in contribution is higher than 0.5% and 2.5% for employee and employer, respectively. Employee take home pay will decline for employees of companies whose pay structures include multiple allowances paid monthly. All pension contributions should indeed go up! It is however our expectation that Pencom will come up with a clearer interpretation of this definition to the favour of both employers and employees, because we believe the intention of the new Act is not to make life anymore difficult for stakeholders than currently obtains. Sticking to the minimum of basic salary, housing and transport allowances is therefore our recommendation, for now.

**Exemption from taxes**

The Act is now more emphatic regarding the tax exemption of all interest, dividend, profits, investment and other incomes accruable to pension funds and assets. This is in addition to the deductibility of contributions made by employees and employers from their taxable earnings under the old law.

**Comments:** This is a welcome development. Before now many banks have been torn between the FIRS insistence that all interests are liable to Withholding tax deduction and the protest by the pension fund administrators, claiming exemption under the Pension Reform Act 2004.

**Withdrawal from retirement savings account**

An employee who voluntarily retires, disengages or is disengaged from employment can now withdraw a maximum of 25% of the total savings in his retirement savings accounts, if he remains unemployed for 4 months. The period of un-employment was 6 months in the old law.

**Nominal Retirement Savings Accounts**

Where an employee fails to open a Retirement Savings Account (RSA) within 6 months of assumption of duty in an employment, his employer can now request a PFA to open a nominal RSA for the employee for remittance of his pension contributions. This is however subject to guidelines issued by the commission.

**Comments:** We hope that Pencom will quickly release the appropriate guidelines for the operation of this new provision. Currently some employer have been faced with employees leaving employment without opening RSAs, leaving employers stranded with their contributions. The matter is not made any better by Pencom that holds the employer liable for the non-remittance and even inflicts penalty on the employer for a situation he could not have helped. This provision appears to confirm the position held by most employers and other stakeholders before now, that the employer should not be held liable for the non-remittance of pension contribution of employees that have failed to provide their RSA details, even up to the time of disengaging from the employment. The new provision is certainly justice for the employer!
Penalty for late remittance of contributions This has not changed from the 2% for each month the default continues as in the old law, to be credited to the employee’s RSA. However Section 11 Spurpose of defraying costs incurred by it for recovering the contributions, together subsection 9 has been amended to allow Pencom access such penalty for the with the penalty.

Comments: We foresee an upsurge in the activities of pension recovery agents, as has been experienced in the area of taxation. Such agents are also likely to be driven more by the financial benefits than by professional and ethical standards, as their remunerations become commission based. The unrestricted access of Pencom to contributors RSAs to defray the cost of recovery of unremitted contribution and the penalty should be of utmost concern to contributors.

Offences and penalties
More punitive actions have been introduced for misappropriation or stealing of pension funds. Specifically, a Pension Fund Administrator, Pension Fund Custodian or body corporate who misappropriates or diverts pension funds is liable on conviction to a fine of three times the amount misappropriated or a term of not less than 10 years imprisonment or both. In addition to these penalties, the amount misappropriated must be refunded and offenders would forfeit to Federal Government any property, asset or fund with accrued interest or proceed of any unlawful activity under this act in his/her possession, custody or control.

Overall, we believe the new Act has addressed a number of deficiencies in the old law, albeit coming with a few of its own errors and near-contradictions. With national Pension assets currently in the region of four trillion naira, the responsibility of Pencom to ensure stability and security of the contributors’ funds has never been greater. We hope this task will be made lighter with the more stringent deterrent provisions in the Act.

We therefore expect that Pencom will issue a circular or regulation to clarify all aspects of the new Act to stakeholders, so as to enhance compliance.
In the meantime, employers are advised to take note that the new law is already live from 1st July 2014, hence payrolls for July must be primed to meet the new requirements so as to avoid the sanctions of Pencom in the future.

On this and other tax matters, please contact any of the following:

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