Executive summary
The Nigerian government has enacted a revised law governing employee pension arrangements. This replaces landmark legislation from 2004 which introduced the country’s contributory pension scheme for the first time. The new law expands the base of employees for whom contributions should be made; increases contribution rates and expands the income base by which contributions should be calculated. It also introduces various changes to the governance model applicable to pension schemes and group life assurance.

Employers of domestic and internationally mobile staff in Nigeria (including those seconded from Nigeria) should review their pension arrangements to ensure they are compliant with the new law.

Key issues
On 1 July 2014, the Nigerian President signed the Pension Reform Act 2014 (PRA 2014 or the Act) which replaced the Pension Reform Act 2004 (PRA 2004).

Nigeria’s contributory pension scheme which was established under PRA 2004 recorded tremendous success in its first decade of operation. A number of major changes are introduced in the new law with the pertinent ones being detailed below.

1. Revised threshold for private sector compliance
Section 2(1) of the PRA 2014 has increased the minimum threshold for compliance by private sector organizations to 15 employees and above. Section 2 (3) has also stated that employees of organizations with less than 3 employees - as well as self-employed persons - shall be entitled to participate under the scheme in accordance with guidelines issued by the National Pension Commission (NPC).

It should be noted that there appears to be a gap in the legislation as there is no clear provision for participation in the scheme by organizations with 3 to 14 employees. It is hoped that the NPC will issue guidelines to address this apparent gap in the Act.

2. Increase in contribution rates
The PRA 2014 has increased the minimum rate of contribution by employers and employees to 10% and 8% of the employee’s monthly emoluments respectively which results in an 18% cumulative contribution. However, the Act also provides that where the employer elects to bear the full cost of both the employer and employee contributions, the minimum contribution is
set at 20%, which is an additional 2% over the standard mandatory contributions.

The rates of contribution under the repealed law were 7.5% for the employer and 7.5% for the employees, making an aggregate contribution of 15%. Therefore the new Act represents an overall increase in the mandatory contributions for both employee and employer.

3. **Application of the PRA 2014 to employees of the federal, state and local government councils**
The PRA 2014 was extended to apply to employees of governments of the states in Nigeria and the local government councils. The repealed law had only applied to employees of the federal government, the federal capital territory and the private sector so this represents an important change for employees who were not previously covered by the pension legislation.

4. **Application of contributions to employee total emoluments**
The PRA 2014 has extended the application of pension contributions to the total emolument of the employee as indicated in an employee's contract of employment. The monthly emolument of an employee is defined in section 120 of the PRA 2014 as the employee's total emoluments as stated in the contract of employment, provided that it is not lower than the total sum of their basic salary, housing allowance and transport allowance.

The basis for contributions under the repealed PRA 2004 was restricted to the total sum of basic salary, housing allowance and transport allowance.

5. **New measure introduced to enforce group life assurance policies on behalf of employees**
The PRA 2014 provides that the premiums due from an employer in respect of life assurance policies for their employees shall be paid not later than the date of commencement of the cover. The Act also provides that employers that fail or omit to make timely payment of the life insurance premiums will settle claims arising from the death of any staff in their employment during that period. These measures were not in the repealed law.

Employers therefore need to consider this new provision and ensure that their employee group life insurance payments are current at all times.

6. **Additional tax reliefs**
The Act has provided the following additional tax exemptions:

- All interest, dividends, profits, investments and other income accruable to pension funds and assets under this Act shall not be taxable.
- Any amount payable as retirement benefit under the Act shall not be taxable.

7. **Employers to open Retirement Savings Account (RSA) for defaulting employees**
The PRA 2014 has introduced a provision that requires employers to open a nominal Retirement Savings Account (RSA) for employees who fail to open such accounts within 6 months from the start date of pension contributions being due for the employee. The practice of keeping deductions in designated escrow accounts where employees failed to provide RSA is no longer tenable under this Act.

8. **Individuals who are unable to secure employment after 4 months of leaving a previous employment may make withdrawals from their RSA**
Section 16(5) of the Act has introduced a provision allowing an employee that leaves employment before the age of 50 and unable to secure another employment within 4 months of leaving to make withdrawals from their retirement savings account.

In addition, the PRA 2014 has reduced the period for accessing benefits in other instances of retirement under the age of 50 from 6 months (as provided under the repealed PRA 2004) to 4 months.

There is also a new provision that individuals accessing benefits in the above instances will be reintegrated into the scheme upon securing another employment, subject to guidelines to be issued by the NPC.

9. **Penalty for misappropriation of pension funds**
The PRA 2014 has created new offences and provided for more severe penalties that will serve as deterrence from the mismanagement of pension funds.

The Act provides that misappropriation of a pension fund will attract a penalty of not less than 10 years imprisonment on conviction. There are also various degrees of penalties payable on conviction. In addition to the penalties and imprisonment, the relevant court adjudicating the matter has been empowered to order the forfeiture of the assets of the perpetrators to the federal government of Nigeria.

10. **Enforcement and dispute resolution under the Act**
The PRA 2014 has empowered Nigerian courts, in a dispute for mismanagement of pension funds, to lift the corporate veil of a body corporate where it is necessary to reveal members of the entity that may be liable for an offence and to ensure the speedy and correct determination of any case brought before it.
Furthermore, the PRA 2014 has empowered employees or beneficiaries of an RSA, that are dissatisfied with a decision of the Pension Fund Administrator (PFA) or an employer on pension matters, to request in writing that such decisions be reviewed by the NPC. This should help to resolve disputes between employees and their employers or their PFAs.

Next steps
The PRA 2014 did not specifically provide for a commencement date. However since it was signed by the President on 1 July 2014, the date of his signature is deemed to be the commencement date. Employers are therefore required to comply with the Act from this date and as such must ensure that their current pension schemes are compliant with the new Act.

Employers with internationally mobile staff should consider the implications of the changes to pensions on both their outbound tax equalized assignees who remain in their home pension scheme, and on their inbound assignees who join the host pension scheme.

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