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TO OUR ESTEEMED CLIENTS AND ASSOCIATES

This is to bring to your notice that **The National Social Security Fund Act, 2013 (Act No 45 of 2013)** got the Presidential assent and enacted into law with effect from 10 January 2014.

Accordingly, all the employers, employees and self-employed persons are required to comply with the requirements of the NSSF Act 2013 ("the Act") with immediate effect. Thus, the NSSF contributions from the month of January 2014 are required to be made as per the provisions of the NSSF Act, 2013.

This circular is intended to give a broad outline as to the process and procedure for registration, computation of monthly contributions and remittance of the contributions to NSSF. For a full understanding of the Act, please read the Act and the Schedules therewith.

Under the new Act, the scheme of National Social Security Fund is converted from a Provident Fund to a Pension Fund. The NSSF contributions made thus far to NSSF and arrears, if any, applicable till December 2013 will all be vested in the Provident Fund to be administered by the NSSF Board of Trustees separately from the contributions henceforth.

The Act covers all employees, (except Apprentices), who are within the age limits of 18 years and 60 years, who are employed in Kenya or residents of Kenya and employed outside Kenya by employers with a place of business in Kenya.

The term *"contract of service"* is defined to include casual employment as well, unlike in the old NSSF Act. Thus, the monthly contributions need to be made in respect of casual, seasonal, contract workers also and all such persons are required to be registered with the NSSF. Special Contributions made under the old Act in respect of the casual employees are discontinued.

The term *"wages"* is defined to include all emoluments payable to an employee under a *contract of service.*

"Pensionable earnings" is defined to mean the lower of the employee's monthly *wages* and the *Upper Earnings Limit*.

"Lower Earnings Limit" means, for each financial year, the amount gazetted by the Cabinet Secretary responsible for matters relating to Social security as the average statutory minimum monthly basic wage for the top urban centres, second tier urban centres and rural areas for the year.

"Upper Earnings Limit" is defined as the sum equal to four times *National Average Earnings* as published by the Kenya National Bureau of Statistics in the Economic Survey for the prior year.

"Tier I Contributions" means for any month, contributions in respect of Pensionable Earnings up to the *Lower Earnings Limit*.

"Tier II Contributions" means for any month, contributions in respect of *Pensionable Earnings* above the *Lower Earnings Limit*.

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However, through the Third Schedule to the Act, the contributions for the first four years (i.e., effectively calendar years 2014, 2015, 2016 and 2017) have been regulated and are required to be made in a progressively increasing manner. Thereafter, the contribution requirements of the Act take full effect.

For the convenience sake, the table of Tier I Contributions and Tier II Contributions prescribed under the Third Schedule which will be effectively applicable for the years 2014, 2015, 2016 and 2017 respectively is copied hereunder:

2013 *National Social Security Fund* No. 45

THIRD SCHEDULE: [S 20(1) (c)]

TABLE DEFINING PROGRESSION OF RATES OF CONTRIBUTIONS

1. The Lower Earnings Limit and the Upper Earnings Limit shall, for the first four years after the commencement date, be in accordance with the Table contained in this Schedule.

2. After the fourth year and thereafter-

the Lower Earnings Limit shall be, for each financial year, the amount gazetted by the Cabinet Secretary from time to time as the average statutory minimum monthly basic wage for the top urban centres, second tier urban centres and rural areas for the year; and

(b) the Upper Earnings Limit shall, for each financial year, be the level of earnings equal to four times National Average Earnings.

3. For the purposes of this Act, the calculations based on the Table herein shall be denominated in the Kenya shilling.

THE TABLE

Year	*Lower Earnings Limit*	*Upper Earnings Limit*
1	6,000	50% of National Average Earnings
2	7,000	1 times National Average Earnings
3	8,000	2 times National Average Earnings
4	9,000	3 times National Average Earnings
Year 5 onwards	Lower Earnings Limit as provided in regulation 2(a) of this Schedule	4 times National Average Earnings

Under Section 20 of the Act, employers are required to pay to the Pension Fund in respect of each employee in their employment of *"employer's contribution"* of six percent (6%) of the pensionable earnings and *"employee's contribution"* of six percent (6%) of the employee's pensionable earnings.

Out of such sums, Tier I contributions will be credited to the Tier I Fund Credit and Tier II contributions will be credited to the Tier II Fund Credit.

The Act enabled the payment of Tier II contributions to "C*ontracted out Schemes*" approved and registered by the Retirement Benefits Authority. Payments to such contracted out schemes can be made only after applying and obtaining the written approval of the Retirement Benefits Authority after ensuring that the Schemes comply with the requirements stipulated in the Fourth Schedule to the Act.

The Act, through Section 23 provides for *"Voluntary contributions"* of a minimum of K Sh 200 per month and K Sh 4,800 per annum. Such contributions will be paid into the Provident Fund operated by the NSSF.

Exempt persons are classified, vide section 29 and the First schedule, as the persons entitled for exemption from contribution to social security under the Act under any International Convention; or as persons not ordinarily resident in Kenya who are employed in Kenya for periods not exceeding three years at any one time, being persons who are liable to contribute to social security funds or similar bodies of any country other than Kenya approved by the Cabinet Secretary in writing for this purpose.

In respect of persons who are concurrently employed by more than one employer, Section 32 stipulates that each individual employer shall be responsible for his obligations under the Act. ***This is a deviation from the old Act, under which contributions were being made by only one employer in respect of persons under multiple employments.***

The Pension Fund Benefits include:

a. Retirement pension
b. Invalidity pension
c. Survivors' benefit
d. Funeral grant
e. Emigration benefit

The Provident Fund Benefits shall include lumpsum payments of:

a. Age Benefit
b. Survivors' benefit
c. Invalidity benefit
d. Withdrawal benefit
e. Emigration benefit

The Forms and procedures for monthly contributions are yet to be stipulated by NSSF Board of Trustees as of now. In the mean time, NSSF, by means of a Public Notice clarified that the existing Forms of returns will remain in force for the time being.

The NSSF Board of Trustees is empowered to appoint *"Compliance Officers"* to visit the premises of the employers and examine their respective compliance with the Act. Employers are obliged to give access for these Compliance Officers to all the records as demanded by such officers after ascertaining their *bona fides*.

Under Section 67, Contributions to the Pension Funds operated by NSSF and contracted-out schemes at the prescribed rates stipulated under the Act is a tax deductible expense in the computation of the income tax liability of the members. (Under the Income tax Act, Pension Fund/ Provident Fund Contributions are tax-exempt upto K Sh 20,000 per month).

Under Section 27, the time limit for the remittance of monthly contributions is one month from the end of the month for which the contributions are due. Late payment will attract a penalty of 5% of the sum payable per month or part thereof.

Penalties contemplated under the Act are:

Section 17 – willful obstruction to the Compliance Officers in performing their duties – K Sh 100,000 plus K Sh 1,000 per day during the continuance of the offence.

Section 19 – Failure/ refusal to register the employer or employee(s) – K Sh 50,000.

Section 27 – Late payment penalty – 5% per month or part thereof.

Section 69 – General contravention of the Act or Regulations – K Sh 100,000.

We enclose the PDF copy of the NSSF Act, 2013 (No 45 of 2013) and the Public Notice issued by NSSF in this regard for your further guidance.

Please contact us or NSSF for any further guidance on this matter.

Thanks and regards

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