A QUICK SNAPSHOT OF THE PUBLIC SERVICE SOCIAL SECURITY FUND ACT, (NO. 2) 2018

Introduction

The Public Service Social Security Fund Act, (No. 2), 2018 (PSSSF, "the Act") is now operational. This law was assented by the President of Tanzania on 8th February 2018 and published on 9th February, 2018, vide GN No. 6, Vol. 99 of 2018. The Act applies in Mainland Tanzania in respect of all employers and employees in the Public Service. Public Service is defined under the Act by reference to the meaning ascribed to it under the Public Service Act and which definition includes judicial service, parliamentary service, police force and prisons service and service in the specified corporations.

PSSSF establishes the Public Service Social Security Scheme (PSSSS), provides for contributions to and payments of social security benefits in respect of the service of employees in public service and repeals the Public Service Retirement Benefit Act, the LAPF Pensions Fund Act, the GEPF Retirement Benefits Fund Act and the PPF Pensions Fund Act. It also provides for other related matters.

This article examines briefly this new law, and highlights changes that have been brought by the Act and impacts thereto, if any.

Key Provisions/Changes

Centralized Social Security Schemes

The Act has centralized the social security schemes by merging several existing public schemes into one scheme (PSSSS). The merged schemes are LAPF, GEPF, Public Service Pension Scheme (PSPF) and PPF. The National Social Security Fund (NSSF) remains to cater specifically for employees in the private sector, self -employed, foreigners employed in Mainland Tanzania, employees in international organization based in Mainland Tanzania, and any other category of persons that the Minister responsible for social security matters may specify upon recommendation by the Social Security Regulatory Authority (the Authority).

With the coming into force of the Social Security Regulatory Authority Act in 2008 ("the SSRA Act"), there was introduced liberalization of social security schemes and since 2012 employees were at liberty to choose which scheme they preferred. That was a milestone achievement by SSRA. But now, with the new law, we have only two schemes in place each catering for specified category of employees with no right to choose as the law clearly states where one belongs.

This change entails the transfer of membership of the employees in the public service from the former schemes now repealed and replaced by the PSSSS, and also for transferring all private sector employees, self -employed, employees in international organization to NSSSF. The Act also requires all the voluntary schemes and their respective members and beneficiaries which were administered by the former schemes to be transferred to the PSSS Fund and their respective trust deeds to be deemed to have been entered by the Board of Trustees of the PSSS Fund. The law protects their contributions and will not lose nothing in terms of their contributions and entitlements of their pensions when they reach voluntary or compulsory retirements.

Establishment of Public Service Social Security Fund

The Act establishes the Public Service Social Security Fund ('PSSS Fund') which constitutes, among others, the funds transferred from the former funds (that is PSPF, GEPF, PPF, LAPF and funds transferred from NSSF (for those members of NSSF who have to be transferred to PSSSF). Also, all the assets and liabilities, powers, rights, privileges, duties or obligations, as well as all the investments and legal entities incorporated under the former schemes will be taken over by the PSSS Fund. This includes the legal proceedings pending before any court or tribunal.

This creates uniform set of rules, regulations and standards for the administration and payments of retirement pension's benefits for public service employees and private service employees on the other hand.

Harmonized Deductions and Penalties on late Contributions

Under the PSSS Fund, the contributions payable by an Employer will be twenty per centum (20%) of the employee's monthly salary constituting five per centum (5%) deducted from the employee's salary and fifteen per centum (15%) contributed by the employer. These rates can be varied by the Minister responsible for finance by an order published in the Government Gazette. These contributions are deemed to be paid to the Fund on the last day of each month.

It is worth-noting that 'salary' referred to in the Act means gross salary excluding bonus, commission, cost of living allowance, overtime payments, directors' fees or any other emoluments of a member payable upon rendering service under the contract of service.

The Act further imposes a penalty of one and half per centum (1.5%) of the amount which the employer has failed to remit to the PSSS Fund. If the penalty together with other contribution remains outstanding for thirty days or more after they become payable, the same continues to accrue further penalty of 1.5% of the aggregate amount remaining unpaid for each month after that date. If it is proved that the contributions were deducted from an employee's salary, but the employer failed to remit the same together with the employer's contribution to the Fund, the Board is empowered to credit the said contributions into the member's account in the Fund and charge the cost to the employer. Likewise, the Director General has the discretion to treat such unpaid contributions as paid for purposes of any claim to payment of benefits to the employee. The Fund has the right to recover that amount from the employer. This means an employee's entitlement under the PSSS Fund cannot be affected by the fact that his employer failed to remit his contributions to the Fund. With this, those public offices which delay in remitting their employees' contributions should stand alerted as such delay will mean a liability to them.

Members' Rights over the Contributions and Ability to Mortgage.

The propriety rights over the members' contributions to the Fund are vested in the PSSS Fund until such time when they become payable to a member. Consequently, members are restricted from assigning, transferring or attaching any of such sums to a debt or claim against them. However, a member is allowed to use part of his entitlements as collateral for home mortgage not exceeding 50% of the total benefits entitlement at the time of the award. Further, member's benefit or right over a benefit under the Act can be assigned or transferred for purposes of satisfying a debt due to the Government or court's order for the periodical payment of the sums of monies towards the maintenance of member's spouse, former spouse or child.

In some former funds like PPF Pension Fund, upon a written consent, a member could assign or attach his pension or gratuity to discharge a debt due to the employer. With the changes, this practice has undergone a natural death. This may, in turn, affect the provision of staff loans by some employers who relied on the option of capacity of the employees to pledge their social security benefits as collaterals for their loans.

Synchronization of Retirement Benefits for Public Service Employees and Penalty for Delayed Payments

The Act provides for Retirement benefit payable upon a member attaining age of compulsory retirement which is sixty (60) years or voluntary retirement, fifty-five (55) years), with exception to members whose statutory terms of employment prescribe an age of retirement shorter or longer than the above ages. The minimum qualifying period for this benefit is fifteen (15) years of contributions (equal to one eighty (180) months contributions). This is a change for those employees who were members under PPF in which the minimum qualifying period was ten years.

However, for those members who attain the age of retirement without meeting the qualification including the minimum qualifying period, they will be entitled to a special lump sum prescribed by the regulations made under the SSRA Act.

An employer is required to notify the Fund of its employee's retirement 6 months before the retirement upon which the Fund will be mandated to pay the employee his retirement pension benefits within 60 days from the date of retirement. Otherwise, the Act has imposed a penalty of 5% of the sum payable to a member per annum on top of the entitled retirement package to the employee in case the Fund fails to pay the employee within 60 days due to problems not caused by the member.

Notwithstanding the changes, those members who are currently receiving pensions or any other benefit from the former schemes, shall continue to receive the same from the PSSS Fund as if they were the pensioners or beneficiaries of the Fund. This means even the amounts to be received will not be altered.

Synchronization of Social Security Benefits

The Act provides for several benefits including Retirement Pension Benefit, Survivors' Benefit, Invalidity Benefit, Maternity Benefit, Unemployment Benefit, Sickness Benefit, and Death Gratuity. Some benefits which were provided for under some of the former funds are no longer available, for instance Educational Grant from LAPF and GEPF.

No member can withdraw any sum of monies from his account with the PSSS Fund except with the authority of the Board of Directors which authority is given upon satisfaction that the member has met the qualifying conditions provided under the law. And the qualifying conditions are those provided under specific benefits.

A member who intends to leave the United Republic of Tanzania with no intention of returning and is emigrating to a country with which the United Republic of Tanzania has no bilateral agreement to allow portability of benefits, is entitled to get a refund of his contributions under the Fund. This means a member who leaves Tanzania with intention of coming back or to a country with bilateral agreement to allow portability of benefits from Tanzania does not qualify for this benefit.

Maternity benefit is payable to a female member who has made contributions for at least thirty-six months (3 years) if she delivers a certificate from accredited medical provider certifying that she is expecting delivery of a child to the Director General of the Fund. The benefit is payable as cash at the rate to be prescribed by the Board established under the Act ("the Board") and a medical care during pre-natal and post-natal period by an accredited medical practitioner or midwife not covered by the National Health Insurance Fund (NHIF). For still birth, a member shall be paid at a rate to be prescribed by the Board. However, this benefit is only payable four times in a member's employment cycle.

Invalidity Benefit is payable to a member who cannot perform his duties due to physical or mental disablement upon recommendation by a competent authority. However, such benefit is not payable to a member whose disability is caused by occupational diseases contracted out of or during his employment. The rate and duration of the benefit is to be provided under the Regulations to be made under the Act.

Unemployment benefit is payable to a Tanzanian member below fifty years old, who ceases to be employed for a reason other than resignation, with minimum contribution of not less than eighteen months, who does not qualify for pension, gratuity or other long-term benefit payable under the Act.

There is also sickness benefit, but there are no adequate explanations on the same as desired qualifications to get the benefit, duration of the provision of the benefit, formula for determination of the benefit and all other matters related thereto.

Suits by and against the Board

The PSSSF Board, at the instance of the Director General, is empowered to institute suits to recover contributions by way of a summary suit under Order XXXV of the Civil Procedure Code, Cap. 33 R.E 2002 as amended (Civil Procedure Code') within twelve (12) years from the date they become due. Such suits restrict a defendant from defending himself unless by court's conditional or unconditional leave. In this case, the law provides for a conditional leave which requires the defendant to deposit a sum equal the amount of contributions claimed under the suit as a security for due performance of the decree, in case the judgment is entered against the defendant. However, there are no amendments of the provisions of Order XXXV of the Civil Procedure Code to cover recovery of debts by a social security fund. We believe the amendments to that effect are underway as it might have skipped the eyes of the legislators.

Savings and Amendments

Notwithstanding the repeal of the Acts as explained above, the Act retains the regulations, rules and orders or any other subsidiary legislations made under the said Acts until revoked. Hence, until such revocation occurs, any references to the Acts which established the former funds will be construed as references to the PSSS Act. Likewise, the force of all the deeds, bonds, agreements, instruments and working arrangements subsisting immediately before the Act affecting any properties transferred, remain to be against or in favour of the Fund.

The Act amends the Fire and Rescue Force Act, [Cap. 427 R.E 2002] by providing for additional terminal benefits to the Commissioner-General thereto. Judges (Remuneration and Terminal Benefits) Act, [Cap 424 R.E 2002] is amended by adding some terminal benefits for the Chief Justice, Justice of Appeal and a Judge. The Police Force and Prisons Service Commission Act, [Cap 241 R.E 2002] is also amended to improve the terminal benefits of the Principal Commissioner of Prisons and Inspector General of Police. Further, the Public Service Act, [Cap. 298 R.E 2002] is amended by designating all matters relating to retirement benefits of Public Servants to be governed by the PSSS Fund. The amendments also increase the terminal benefits for the Chief Secretary, Attorney General, Director-General of Intelligence, Controller and Auditor-General, Deputy Attorney General and Director of Public Prosecutions, and Director General of Prevention of Corruption Bureau.

Conclusion

The Act has provided for about six benefits among the nine benefits provided for in the International Labour Organization (ILO), Social Security (Minimum Standards) Convention, No. 102 of 1952. To some extent, the Act has also addressed some of the policy issues under the National Social Security Policy of 2003, including coverage, inadequacy of benefits offered, portability of social security benefits, and lack of coordination. The Act read together with the SSRA Act with its rules, regulations and guidelines have addressed these issues.

Further, even though the Act has addressed the issue of reciprocal agreements for transfer of benefits across countries to some extent, with globalization which has come along with expansion of labour market and labour mobility across nations, the government should work on establishing different mechanisms for transfer of social security benefits across countries. Thus, the government should try to conclude reciprocal agreements for transfer of benefits with various countries across the world. This can also be done through bilateral and multilateral agreements.

The issue of partial withdrawal of benefits has not been addressed. As a matter of practice, the previous regimes of funds catered for this once employees were terminated or decided to leave their employment for self and/or change of employment. Employees had an option to continue with the contributions or request for payment at the time and start afresh. Hence, this can be taken as food for thought for the government.

This article was prepared Adv. Miriam Bachuba from IMMMA Advocates. The contents herein are a basic overview and should not be relied upon without seeking specific legal advice. For more information please contact the author Associate Miriam Bachuba on bachubam@immma.co.tz or our Managing Partner Sadock Magai on magai@immma.co.tz

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