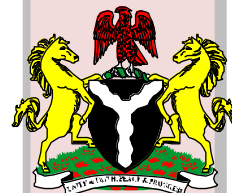


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Guidelines for Cross Border Arrangements under the Pension Reform Act

RR/P&R/08/016

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National Pension Commission

About this Guidelines

The Guidelines for Cross Border Arrangements is divided into four (4) sections.

Section one is the preamble while section two addresses eligibility, provisions of PRA 2004, foreign employees in Nigeria, Nigerians working abroad, Nigerian employees moving abroad, Nigerians returning from foreign employment.

Section three addresses rules of general application, administrative rules, requirements for contributors, exchange rate rules, taxation rules, money laundering rules.

Section four deals with the mode of contribution, approved currency, percentage contributions, overseas remittances, and withdrawals.

The requirements of these Guidelines are consistent with the provisions of the Pension Reform Act, 2004 and are also considered enforceable within the industry.

RR/P&R/08/016

GUIDELINES FOR CROSS BORDER ARRANGEMENTS UNDER THE PENSION REFORM ACT

1.1 Introduction

- 1.1.1 The economy has in recent years witnessed strong trends towards globalization facilitated by advancements in Information Technology, Communication, etc. which led to a spate of international mobility of people and services. This situation is not different in the case of Nigeria. Expatriates have moved into the country to take up employment and Nigerians have also moved out of the country in search of employment. The mobility of labour, particularly that involving employment across multiple jurisdictions has implications for the pension industry.
- 1.1.2 In the pension industry, the sole aim is to protect the individual workers (i.e. contributor) and ensure that they get their retirement benefits at the appropriate time.
- 1.1.3 It is expected that there would be instances where some Nigerian RSA holders move abroad for new employment, secondments, transfers, etc, and some Nigerian employees abroad would return home on transfers or to secure new jobs. Following the increasing interest shown by Nigerians abroad to take part in the Nigerian Contributory Pension Scheme and enjoy the benefits accruing thereof, and in pursuance of same by expatriates working in Nigeria, it has become imperative to initiate guidelines that would set the stage for cross border arrangements under the Scheme.

- 1.1.4 Multinational organizations in Nigeria have employees who are already members of various pension plans in their home countries; the issue as to whether these employees should be allowed to join the Nigerian Pension Scheme needs to be addressed, considering the provision of Section 1 (1) of the Pension Reform Act 2004 (PRA), which stipulates that "...there shall be established for **any** employment in the Federal Republic of Nigeria a contributory Pension Scheme for payment of retirement benefits of employees to whom the scheme applies". That provision includes any individual (including expatriates) engaged in an employment with an organization having at least five (5) employees within the Nigerian jurisdiction.

- 1.1.5 It is pertinent to note that, cross border employment often leads to loss of pension rights as a result of waiting or vesting periods imposed by some schemes and quite a number of schemes do not permit transfers of rights to countries they do not have cross border arrangements with.

- 1.1.6 There are also issues of regulations of relevant authorities such as the EFCC, NDLEA, FIRS and CBN with regards to issues such as money laundering, exchange rate and tax laws as well as other bilateral agreements between the Nigerian Government and the countries involved.

1.2 Definitions

1.2.1 In broad terms, **cross border arrangements** refer to arrangements involving two jurisdictions or more.

1.2.2 They could also include the conditions, which an expatriate in a particular country wishing to participate in the on-going arrangement of that country must satisfy, before his participation can be allowed.

1.2.3 For the purpose of this document, therefore, cross border arrangements shall involve the conditions and/or the set of guidelines under which expatriate employees in companies registered in Nigeria and Nigerian citizens serving in other countries, could participate in the Nigerian Contributory Pension Scheme.

1.2.4 These arrangements shall also address Nigerians in Diaspora, who may wish to make voluntary contributions as provided in Section 9(4) of the PRA'04.

1.3 Objectives

1.3.1 These guidelines have been put in place for the purpose of establishing a standard set of rules and procedures for the Contributory Pension Scheme established in Nigeria for foreign nationals and Nigerians resident abroad to participate in the Contributory Pension Scheme.

1.3.2 It shall seek to encourage the participation of Nigerians abroad in the Contributory Pension Scheme and assist them to save in Nigeria towards their old age and subsequent return.

1.3.3 It sets out to provide a platform to accommodate foreigners working in Nigeria in the new scheme, thus guaranteeing a better retirement life for them.

1.3.4 Resulting from 1.3.2 and 1.3.3 above, the guidelines shall seek to expand the funding base of the pension assets, thus providing more funds for investment.

1.4 Form and Content

1.4.1 The requirements of this arrangement are in conformity with the provisions of the Pension Reform Act 2004.

1.4.2 The guidelines address the applicable exchange rate used in calculating monthly contributions.

1.4.3 Specifies individuals who are eligible to contribute under the scheme.

1.4.4 The guideline is divided into four main sections:

- Preamble
- Eligibility
- Rules of General Application
- Mode of Contribution

2.0 Eligibility

2.1 Provisions of the Pension Reform Act 2004

2.1.1 Pursuant to the provisions of section 1(1) of the PRA'04, which states that "... there shall be established for any employment in the Federal Republic of Nigeria a contributory Pension Scheme for payment of retirement benefits of employees to whom the scheme applies", the pension scheme under the PRA'04 shall be deemed to cover individuals under any employment in the Federal Republic of Nigeria. Such individuals shall include Nigerian employees of Embassies, High Commissions and International Organizations. However, foreign nationals working in Nigeria could at their discretion join the mandatory contribution scheme.

- 2.1.2 Other individuals that shall be eligible to make contributions under the PRA shall include Nigerians working abroad, Nigerian employees returning from foreign employments and employees migrating to or from Nigeria due to transfers and/or secondments within the sub-regions.
- 2.2 Foreign Employees in Nigeria**
- 2.2.1 Any foreign employee of a company registered in Nigeria shall, at his/her discretion, join the contributory pension scheme, without considering whether or not he/she has a pension arrangement in his/her home country.
- 2.2.2 The employee shall inform his employer of his interest to join the scheme.
- 2.2.3 Pursuant to 2.2.2 above, the employee shall open an RSA with a PFA of his/her choice.
- 2.2.4 The RSA opened as in 2.2.3 shall be denominated in Naira.
- 2.2.5 Where the employee's wage is paid in foreign currency, his/her employer shall convert his/her contribution to Naira equivalent and remit to the PFC.
- 2.2.6 In the event of permanent relocation of the individual, he/she shall give (three) 3 months prior notice to the PFA before exiting from the scheme.
- 2.2.7 Pursuant to 2.2.6 above, the employee shall tender a document issued by his/her employer, evidencing permanent relocation to his/her PFA; before he/she can access the balance on the RSA.
- 2.2.8 The PFA, upon receipt of the document in 2.2.7 above shall apply to the Commission for the release of accumulated contribution in the RSA of the relocating foreign employee.
- 2.2.9 The responsibility of ascertaining the authenticity of the document referred to in 2.2.7 lies with the PFA.
- 2.2.10 Upon receipt of the Commission's approval, the PFA shall instruct its PFC to release funds, in naira, to the order of the relocating foreign employee.
- 2.3 Nigerians Working Abroad**
- 2.3.1 Any Nigerian working abroad, who is interested in joining the new pension scheme, shall be allowed to participate in the scheme by making voluntary contributions.
- 2.3.2 The voluntary contributions in 2.3.1 above shall be made in accordance with the provisions of the guidelines on voluntary contributions, issued by the Commission.
- 2.3.3 Nigerian employees of Nigerian institutions with offices abroad shall be allowed to participate in the scheme.
- 2.3.4 Where the employee in 2.3.3 joins a retirement benefit scheme abroad, he/she shall be allowed to repatriate his/her accumulated benefits to his/her RSA with a PFA in Nigeria, where the off shore pension regulators legislation permits such transfers.
- 2.3.5 The repatriation of accumulated benefits in 2.3.4 above shall be required to comply with the Exchange Rate and Money Laundering Rules set out in 3.3 and 3.5 below, respectively.
- 2.4 Nigerian Employees Moving Abroad**
- 2.4.1 Any Nigerian employee already contributing into his/her RSA going on transfer to another country or leaving his/her employment in the country for another employment abroad, shall

notify his/her PFA through his/her previous employer.

- 2.4.2 Pursuant to 2.4.1 above, the employee shall request the PFA to freeze his/her RSA until he/she returns to continue his/her contributions.
- 2.4.3 Pursuant to 2.4.2 above, the employee shall indicate whether he/she intends to send voluntary contributions into the RSA.
- 2.4.4 Pursuant to 2.4.3 above, the employee shall sign an undertaking to bear any expenses/loss that may arise from the remittance and conversion of the voluntary contributions denominated in foreign currency, to Naira.

2.5 Nigerians Returning from Foreign Employments

- 2.5.1 A Nigerian previously working abroad shall be part of the scheme if upon his/her return to the country; he/she secures an employment in Nigeria or otherwise, may make voluntary contributions.
- 2.5.2 Pursuant to 2.5.1, he shall open an RSA with a PFA of his choice, into which his/her contributions shall be paid.
- 2.5.3 Where a Nigerian wants to repatriate his/her accrued benefits into his/her RSA, he/she shall obtain anti-money laundry clearance/approval from relevant authorities in the home country (i.e Nigeria) and the host country (where he was previously working), in line with 3.5 below.
- 2.5.4 Pursuant to 2.5.3, he/she shall tender a letter from the Administrator of the Pension Scheme stating the amount to be transferred to his/her PFA.

3.0 Rules of General Application

3.1 Administrative Rules

- 3.1.1 The Pension Fund Administrator (PFA) shall issue application forms to prospective cross-border contributors. Such forms shall comply with the requirements in section 3.2 of these Guidelines.
- 3.1.2 Report of cross border registrations shall be rendered by PFAs to the Commission, monthly.
- 3.1.3 In addition to the above, all other functions and services assigned to the PFA by section 45 of the PRA 2004 shall be extended to the cross border arrangements.
- 3.1.4 In addition to its statutory functions, the Pension Fund Custodian (PFC) shall open domiciliary accounts to receive and remit foreign currency contribution on behalf of its PFA, as the need arises.

3.2 Requirements for Contributors

- 3.2.1 A Contributor under this arrangement shall be required to provide such documents that specify his/her status, to the PFA.
- 3.2.2 A Nigerian working abroad shall provide:
- Evidence of employment in host country.
 - Evidence of remuneration (pay advice).
 - Evidence of nationality (i.e. copy of identification page of international passport).
 - Evidence of work permit in host country.
 - Clearance from relevant authorities against money laundering, in line

with the Money Laundering Rules set out in 3.5 below.

- Letter of undertaking to bear any short fall resulting from exchange rate fluctuations. Such undertaking shall also include the individual's willingness to bear all commissions/charges relating to the transfers.

3.2.3 A foreign employee in Nigeria shall provide:

- Employment letter from his/her employer being a company registered in Nigeria.
- Evidence of resident permit in Nigeria.
- Letter of introduction by employer.
- Application letter to participate in the scheme to be signed by the employee.
- Clearance from relevant authorities with respect to money laundering, in line with the Money Laundering Rules set out in 3.5 below.
- Letter of undertaking to bear any short fall resulting from exchange rate fluctuations, as well as commissions/charges.

3.2.4 A returning Nigerian employee shall provide:

- Clearance from relevant authorities with respect to money laundering, in line with the Money Laundering Rules set out in 3.5 below.
- Evidence of employment in foreign country.
- Evidence of termination/resignation of appointment or transfer.
- Document indicating the previous employer's willingness to repatriate the pension benefits.

3.3 Exchange Rate Rules

- 3.3.1 Where a contributor in Nigeria is earning his salary in foreign currency, his contribution shall be the naira equivalent.
- 3.3.2 The rate of exchange to be applied for the conversion of imported contribution shall be the official exchange rate prevailing as at the date the contribution was received.
- 3.3.3 The contribution to be credited to the individual's RSA shall be after all transfer charges have been deducted.

3.4 Taxation Rules

- 3.4.1 Within the Nigerian jurisdiction, pension funds are not subject to tax, hence contributions made by foreign nationals shall be tax free.
- 3.4.2 An employee's voluntary contribution shall be tax deductible at the point of withdrawal if such withdrawal is made before the end of 5 years from date of first contribution, in line with Section 7(2) of the PRA.

3.5 Money Laundering Rules

- 3.5.1 Any individual making contributions from abroad in foreign currency, shall make such contributions through the bank to ensure that the transactions are subject to necessary CBN approvals and anti-money laundering checks within the financial system.
- 3.5.2 The individual in 3.5.1 above shall report to the Economic and Financial Crime Commission (EFCC) and Nigerian Drug Law Enforcement Agency (NDLEA), all foreign currency contributions in excess of N1 million or its equivalent, in compliance with the provisions of Section 10 (1) of the Money Laundering Act.

- 3.5.3 The clearance obtained in 3.5.1 and 3.5.2 above, shall be pre-requisites for submission of an application to the Commission by the relevant PFA.
- 4.0 Mode of Contribution**
- 4.1 Approved Currency**
- 4.1.1 The approved currency shall be the Nigerian Naira.
- 4.1.2 The prevailing official exchange rate as at the date of receipt of the contribution shall be used in converting all contributions.
- 4.1.3 Any short fall resulting from exchange rate fluctuations and administrative charges shall be borne by the contributor.
- 4.2 Percentage Contribution**
- 4.2.1 Contributions of the individuals are expected to be voluntarily made.
- 4.2.2 Voluntary contributions shall be at a rate pre-determined by the individual.
- 4.2.3 Pursuant to 4.2.2, the contributions shall not be less than the equivalent of N5,000 monthly.
- 4.3 Overseas Remittances**
- 4.3.1 PFAs/PFCs dealing with individuals under these cross-border arrangements shall open domiciliary accounts with any bank of their choice.
- 4.3.2 Any PFA/PFC opening a domiciliary account as in 4.3.1 above shall seek and obtain approval from the Commission.
- 4.3.3 Contributions and/or accumulated retirement benefits repatriated/imported shall be paid into the domiciliary account of the PFA/PFC.
- 4.3.4 The amount transferred to the domiciliary account in 4.3.3 above shall be converted to Naira at the appropriate rate and credited to the RSA of the individual.
- 4.3.5 On the other hand, benefits of foreign nationals permanently relocating outside Nigeria shall be converted into the desired currency and paid into the domiciliary account from where it shall be remitted as instructed by the individual.
- 4.4 Withdrawals**
- 4.4.1 In line with Section 7 (2) of the PRA 2004, withdrawals from voluntary contribution could be made before five years and such withdrawals shall be taxed accordingly.
- 5.0 Review and Enquiries**
- 5.1 These Guidelines shall be subject to review by the Commission from time to time as the need arises.
- 5.2 All enquiries regarding these guidelines shall be directed to the Director General, National Pension Commission.

15 December, 2008