



SOCIAL SECURITY COMPLIANCE OBLIGATION DURING COVID-19 IN SIERRA LEONE

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1. Introduction

On 31st March 2020 the Government of Sierra Leone announced the first confirmed COVID-19 case in Sierra Leone. Consequent upon the said announcement, several measures have been taken by the Government to contain the spread and this includes but not limited to the imposition of a curfew, movement of goods, services and persons restricted, a ban on international travel both in and out of Sierra Leone, phased lockdowns and the declaration of a state of public health emergency pursuant to section (29)(1) of the Constitution of Sierra Leone Act No. 6 of 1991 (as amended). The debilitating effect on the economy continues to be felt and the squeeze on businesses large and small grows exponentially with each new day. In simple terms, the health pandemic has brought on a financial crisis and the combination of both is most unpleasant. The ramifications of the unholy duo in less robust economies such as Sierra Leone and its lingering effect will undoubtedly be far reaching and long lasting, perhaps even more than Ebola. Medium and small-scale

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businesses will feel the weight of the moment even more than others with time. Failing to prepare for what lies ahead will be preparing to fail. Unlike other jurisdictions that have instituted far reaching measures to cushion the effect of the pandemic such as holidays or deferment of payment with regards to statutory compliance obligations, Sierra Leone is behind that curve. With regards to social security, understanding one's obligations as an employer and preparing for what lies ahead in the era of COVID-19 will be an advantage.

2. Social Security Obligations

Social security payment obligations in Sierra Leone are imposed by the National Social Security and Insurance Trust Act No. 4 of 2001 (as amended) (hereinafter the Act). By Part II of the Act, a body to be known as the National Social Security and Insurance Trust (hereinafter referred to as the Trust) was established as a body corporate with perpetual succession and among others capable of being sued and suing. The object for which the Trust is established is to provide retirement and other benefits to meet the contingency needs of workers and their dependants. The Act applies to (a) every "employer" and to every "worker" employed by him and (b) subject to such conditions as may be specified in regulations, all self-employed persons who opt to join the scheme. The Act defines an employer as meaning (a) "the owner of an establishment or the person who or the authority which has the ultimate control over the affairs of the establishment and where such affairs are entrusted to a manager, managing director or managing agent such manager, director or agent" and (b) "in any other case, the person with whom the worker entered into a contract of service or apprenticeship and who is responsible for the giving of his emolument". "Worker" on the other hand is defined as meaning "any person who is employed for remuneration in any kind of work, whether manual or otherwise, in or in connection with the work of an establishment and who gets his remuneration directly or indirectly, from the employer, and includes any person employed by or through a contractor in or in connection with the normal work of the establishment and (a) is employed in Sierra Leone but not as a member of the crew of any ship or (b) being a permanent resident of Sierra Leone, is employed (i) as a member of the crew of any ship, the owners of which have an office or agents in Sierra Leone or (ii) outside Sierra Leone for an employer in Sierra Leone." By Part VI of the Act, every employer of an establishment shall deduct from the earning of every worker in the establishment immediately at the end of each month, a worker's contribution of an amount equal to 5% of the worker's earnings for that month irrespective of whether or not such earnings are actually paid to the worker. In addition, every employer of an establishment shall apply

for each month in respect of each worker, an employer's contribution of an amount equal to 10% of such worker's earnings for that month. These contributions must be paid within fifteen days after the end of each month to the Trust. The Act also imposes a penalty for late payment, non-payment and a failure of the employer to register his employees as follows; (a) any contribution that is not paid within the prescribed period as above shall attract an interest equivalent to the 90-day Treasury bill rate plus twenty per centum of that rate compounded on a monthly basis. Upon service of a demand note on a defaulting employer by the Trust and if payment of the contribution and interest is not made within thirty days after service of the demand note, a further ten per centum of the 90 – day Treasury bill rate of the total outstanding shall be charged as penalty for each month of default. The Director General of the Trust shall also cause legal proceedings to be taken to collect or recover the contribution together with the interest and penalty and criminal proceedings may also be instituted against a defaulting employer.

3. Advisory and Conclusion

Despite the advent of COVID-19 and its negative effect on businesses, employers are advised that no reprieve and or deferment of payment obligations as provided under the Act has been granted by the Trust. In other words, compliance obligations stipulated under the Act on the employer continue to remain the same pre COVID-19 as prescribed by law. With a now more robust compliance team at the Trust across the entire length and breadth of the country, employers must be forewarned as to the consequences of noncompliance; unless the Director General of the Trust with the approval of the Board of Trustees remit wholly or in part the penalty imposed by the Act. By the Act, interest imposed for late payment however cannot be waived.

This article sets out some basic advisory and information regarding payment of social security obligations imposed by the National Social Security and Insurance Trust Act No. 4 of 2001 (as amended) during the COVID-19 pandemic. Although the contents of the publication are correct, well researched and to the best of our knowledge, information and belief at the time of press true, readers are encouraged to seek further specific and or professional advice from the Firm before taking action on the basis of the opinions or facts expressed herein. We cannot accept any responsibility for any facts or errors that this article may contain whether negligent or otherwise or take responsibility for any loss or damage suffered by any person or business interest that relies on this publication. The Firm has and continues to provide advice to clients both within and out of Sierra Leone on regulatory and compliance issues including social security compliance obligations. Macauley, Bangura & Co. has represented a number of commercial companies and other business houses in Sierra Leone and is currently providing legal, legal advisory, business, tax and other related advice to a plethora of clients both within and out of the jurisdiction grappling with the challenges of compliance and regulatory obligations during COVID -19 in Sierra Leone. The Firm has hitherto served as retained outside counsel and legal advisers to the National Social Security and Insurance Trust for over a decade.

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