



# NSSF 2023 CLIENT COMMUNICATION

The National Social Security Fund (NSSF) Act No. 45 of 2013 was passed by parliament in December 2013, repealing the National Social Security Fund Act, Cap 258 of the Laws of Kenya. The new Act was challenged in 2014 by several employer associations arguing impositions of additional employer liability.

The case was initially filed at the High Court but was transferred to the Employment and Labor Relations Court ("ELRC"). The ELRC struck out the Act and declared it unconstitutional on 19th September 2022 after which NSSF sought a review at the court of appeal. The court of appeal set aside the ELRC judgement on the 3rd of February 2023, therefore allowing the full implementation of the NSSF Act No. 45, 2013.

A notice of appeal has been filed indicating the intention of the County Pensioners Association to seek a review at the Supreme Court against the Court of Appeal's judgement. However, no formal application has been filed to the Supreme Court to delay the implementation of the Act.

We therefore advise full compliance as per the guidelines provided by the NSSF Act.45 of 2013 as highlighted below.

## Objective of the New NSSF Act No.

The main objective of the New NSSF Act is to broaden and increase the level of pension benefits to formal sector employees, address NSSF governance issues and promote increased membership of informal sector employees.

## Key Features of the Act

- The existing NSSF structure is a Provident fund providing Lump sum benefits at retirement for all members. The new NSSF Act has introduced a pension fund structure for formal sector members while retaining the provident fund structure for informal sector members. Formal Sector members will therefore be required to purchase an annuity (monthly pension) upon retirement.
- Employers are required to remit February 2023 contributions to NSSF as per the new structure.
- Existing accumulated member funds will be retained in the old structure and paid out to the members as a Lump sum upon retirement.
- The new Act has introduced 2 levels of contributions :
  - ✦ Tier 1 – Employers are required to remit these contributions to NSSF without exception
  - ✦ Tier 2 – Employers can either remit these contributions to NSSF or to a scheme that is approved by the Retirement Benefits Authority("RBA")
- The pension contributions has been set at 6% of earnings for employees and 6% of earnings for employers subject to an initial total maximum contribution of KES. 2,160 per month.
- The deductions will be based on gross salaries excluding fluctuating allowances such as overtime pay.
- The maximum member contribution amounts for Tier I and Tier II will be as highlighted below:

	EMPLOYER CONTRIBUTION	EMPLOYEE CONTRIBUTION	COMMENT
Tier 1	KES 360	KES 360	Mandatorily remitted to NSSF
Tier 2	KES 720	KES 720	Schemes can opt out and remittance can be made to approved occupational schemes
Total	KES 1,080	KES 1,080	

ICEA LION Centre, Riverside Park, Chiromo Road, Westlands | P.O. Box 46143 - 00100, Nairobi, Kenya  
Tel: 020 2750 000, 0719 071000, 0730 151000 | Email: [contactcentre@icealion.com](mailto:contactcentre@icealion.com) • Website: [www.ICEALION.co.ke](http://www.ICEALION.co.ke)



# NSSF 2023 CLIENT COMMUNICATION

- Tier I and Tier II contribution amounts were based on average earnings as gazetted by the Ministry of Labour. The Act Provides for a gradual increase of the contribution amounts over 5 years, the details of which will be provided in subsequent communications.
- An Employer can receive approval from the RBA to pay Tier II contributions to a Retirement Benefit Scheme approved by the RBA to receive such Contributions.
- Tier II contributions may be deducted from existing scheme contributions. The scheme will record Tier II contributions separately, and this will be paid out to members as per the New NSSF Structure by purchasing an annuity (monthly pension) upon retirement. This structure will apply even if the existing scheme is provident in nature.
- An Employer may also pay Tier II contributions in addition to the existing scheme contribution rates.

## RBA Requirements for Scheme and Employer Approvals

A Scheme will be required to comply with the following requirements to be approved by the RBA to receive Tier II contributions:

- I. Has to be registered by both RBA and KRA
- II. Has to have a reference scheme test certificate from an Actuary or Registered Administrator
- III. Has to have a reference scheme certificate from the RBA allowing it to receive Tier II contributions from an Employer who has been approved by RBA to remit the Tier II contributions.

## Next Steps for Employers

- I. Remit Tier I and Tier II contributions to NSSF from February 2023 pending RBA approval.
- II. ICEA LION has begun a review of the scheme structures to enable application to the RBA to receive Tier II contributions. Upon conclusion of the review, ICEA LION will engage with you to address any additional requirements necessary before the application to the RBA is made.
- III. Once all requirements are met, application to the RBA will be done to allow the Scheme to receive Tier II contributions.
- IV. RBA has provided a timeline of 90-days from the application date for approval to be provided.
- V. In the meantime, all Employers are encouraged to comply with the new NSSF Act requirements until exemption is provided by RBA.

## Upcoming Webinar

ICEA LION will be holding its first free, interactive webinar to provide more details on the implementation and compliance process on Friday 17th February, 2023, at 11.00am to 12.30pm. To register, please click on this link <https://us02web.zoom.us/join/9tJ6tGtGN4gA7CA>

ICEA LION Centre, Riverside Park, Chiromo Road, Westlands | P.O. Box 46143 - 00100, Nairobi, Kenya  
Tel: 020 2750 000, 0719 071000, 0730 151000 | Email: [contactcentre@icealion.com](mailto:contactcentre@icealion.com) • Website: [www.ICEALION.co.ke](http://www.ICEALION.co.ke)