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INSIGHT- FUNDING THE ACTIVITIES OF THE NIGERIA POLICE FORCE

ARTICLE SERIES

INTRODUCTION

The President of the Federal Republic of Nigeria recently assented to the Nigeria Police Trust Fund (Establishment) Act 2019 (“the Act”).

The Act establishes the Nigeria Police Trust Fund (“the Trust Fund”), whose funds are to be applied for training and developing personnel of the Nigeria Police Force (“the NPF”).

The Trust Fund will also be used to buy security equipment and related facilities necessary for the dispatch of the duties of the NPF and improving the general welfare of the personnel of the NPF, both home and abroad.

THE TRUST FUND

The Trust Fund is set to be operational for a term of 6 years, unless extended by an Act of the National Assembly and is to be managed by the Nigeria Police Trust Fund Board of Trustees (“the Board of Trustees”). After the expiration of the term, the Trust Fund must be wound up within six months with all outstanding assets of the Trust Fund transferred to the NPF.

The Board of Trustees is charged with identifying the funding needs of the various institutions of the NPF and overseeing the implementation of projects financed by the Fund. In administering the Act, the Board of Trustees also has the power to issue regulations, subject to the approval of the President.

The Executive Secretary, as appointed by the President on the recommendation of the Minister of Police Affairs, is the Chief Executive and Accounting Officer of the Trust Fund.

The Act also established the Police Trust Fund Project implementation Committee (“the Committee”) responsible for implementing any projects approved by the Board of Trustee.

The Act provides that the Trust Fund will be financed from the following sources:

- *0.5% of the total revenue accruing to the Federation Account;*
- *a levy of 0.005% of the net profit of companies operating business in Nigeria;*
- *any take-off grant and special intervention fund as may be granted by the Federal, State and Local Government of the Federation;*
- *monies allocated by the National Assembly in the budget;*
- *aids, grants and assistance from international bilateral and multilateral agencies, non-government organisations and the private sector, provided the conditions of the grants are in line with the objective of the Fund;*
- *grants, donations, endowments, bequests and gifts from any source, provided the conditions of the grants are in line with the objective of the Fund; and*
- *monies from investments of the Fund.*

Understandably, the Act exempts any income generated by the Trust Fund from income tax.

In addition, the Act also establishes a general fund for financing the administration of the Trust Fund (including payment of salaries, fees, etc.), capitalised as follows:

- *annual budgetary allocation appropriated by the National Assembly; and*
- *take-off grants and other monies made available to the Trust Fund to meet the cost of running the Trust Fund and its administration.*

TAX IMPLICATIONS ON THE PRIVATE SECTOR

The Act imposes a levy of 0.005% on the net profit of companies operating a business in Nigeria. This would ordinarily apply to companies incorporated in Nigeria and the use of the phrase ‘companies operating in Nigeria’ implies that foreign companies with a fixed base/permanent establishment^[1] in Nigeria or executing a contract or project in Nigeria would also be liable to pay the 0.005% levy.

OUR THOUGHTS

It is significant that the Act sets up a fund earmarked for the development of the NPF and its security infrastructure, a prime concern of Nigeria and its citizens. Significant to the private sector is the 0.005% levy to be imposed on the net profits of companies operating in Nigeria as one of the source of funds of the Trust Fund.

While 0.005% (N5 for every N100, 000) does not seem like a lot, this increases the total tax obligations of companies operating in the Nigeria.

Thus, in the face of this additional financial obligation on the private sector, it is likely that companies and business owners may challenge the imposition of the Act.

One of the grounds for such challenge would be the argument that it is the role of the government not the citizenry or businesses to fund the NPF and that in any event, the taxes paid by the businesses should be sufficient contribution towards NPF funding without the imposition of an additional financial burden as the Act seeks to do.

Although the Act states that a bank account is to be opened for the receipt of the monies from the various sources of funds, it fails to provide details on how the imposition of this levy would be implemented, such as the body responsible for collecting and enforcing the levy; whether there is a liability to file returns or financial statements with a named body to determine the net profit; timeline for the remission of the levy to the collecting body; penalties, if any, for failing to remit the levy and dispute resolution mechanisms where the imposition of a levy is challenged.

Also, although the Act provides that Board of Trustees must submit quarterly and annual reports on the activities and administration of the Trust Fund to the President, it is also important that the Board of Trustees is publically accountable and transparent in the management of the Trust Fund. The quarterly and annual reports should be made public records.

Furthermore, we note that although the Act was signed by the President on 24th June 2019, it did not provide for its commencement date nor does it provide that the Act shall take effect immediately. Thus, it is unclear when the term of the Trust Fund shall begin. To ensure that the Act is properly implemented, it is important that the Board of Trustees issues a Regulation which covers the gaps highlighted above.

[1] A fixed base or permanent establishment, is a concept in tax whereby the ties which a business has to certain physical objects, places or persons, are applied to impose tax on such business even where such business claims not to have a corporate presence (vide registration of a business entity), in the country under consideration.

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