



ICPAK SUBMISSION ON THE NATIONAL HOUSING DEVELOPMENT FUND REGULATIONS, 2018

INTRODUCTION

Article 42(1)(b) of the Constitution, 2010 gives every Kenyan the right to accessible and adequate housing, and to reasonable standards of sanitation. In the realization of this right, the Government has prioritized affordable housing as one of the key pillars in the Big Four Agenda.

Following the presidential assent to the Finance Bill, 2018 (now, the Finance Act, 2018), the National Housing Development Fund came into force. Employers are required to remit contributions to the Fund by deducting 1.5% from the employees' salary and contributing the other 1.5%, subject to a maximum total contribution of Kshs. 5,000/=.

The creation of the National Housing Development Fund is meant to help the government realize its goal of delivering 500,000 affordable housing units in five (5) years to stop the expansion of slums in informal dwellings in major towns countrywide.

The deductions from employees and contributions by employers are expected to raise about Kshs. 5.7B annually which will go to the Fund which is hereby established through the regulations.

The Institute has identified the following cross-cutting issues that need to be put into consideration.

1. Introduction of tax credits for employer's contribution: Tax credits work by reducing the amount of tax owed and this may be a relief for firms in terms of cost of doing business. Companies are already grappling with the high cost of doing business and the introduction of this fund may be an additional burden.
2. Increase housing relief for employees: Currently, employees have to cope with numerous statutory deductions from their salaries in the form of taxes. There is need to introduce a housing relief which will help reduce the tax liability.
3. Access must apply equally for both the public and the private sector: There is need to ensure that access to the benefits of the fund are not only skewed to the public sector in form of salaried government employees but that benefits are also accessible by the private sector. This will give incentives to the private sector to support implementation of the affordable housing agenda.
4. Administration of the fund: Funds must be utilized only for the intended purpose. Appropriate checks and balances must be put in place to avoid misappropriation of the fund in the form of graft.
5. Mortgage exemptions: The Regulations should provide that employees currently servicing a mortgage should be exempted from contributing to this fund upon proof of mortgage/home ownership loan plan. This will ease the burden of additional taxes.

The Institute of Certified Public Accountants of Kenya has reviewed the regulations and submissions are as follows:

Section	Provision	Issue of Concern	ICPAK recommendations	Justification
Sec 3 National Housing Fund	(1) The Housing Fund established under section 6(1) of the Act shall be an affordable housing scheme for the purposes of section 30A of the Income Tax Act.	There is lack of clarity on the role of the existing National Housing Corporation vis a vis the National Housing Fund	Outline distinct roles played by each establishment for clarity.	This will avoid duplication of roles which might lead to loss of taxpayers' money.
Sec 3 Affordable housing scheme. Cap. 470	Establishes the definition of an affordable housing scheme by salary component	The definition by salary component is subjective and biased. Some people are not in the salary earning brackets, yet they have housing needs. It is not clear whether the Housing Fund scheme will benefit employees both from the private and public sectors equally.	Amend to include other initiatives to enable Kenyans own houses e.g. subsidize building materials, streamline building approval processes and make them affordable, etc.	There is no equity in the application of this directive. A very small proportion of salaried Kenyans is being forced to build houses for the majority who are in the 'informal' sector and are most likely earning much more. This amounts to double taxation.
Sec 3 (2) (c)	The section classifies income earners in to three groups a) 0 to 14,999 shillings b) 15,000 to 49,999 shillings c)50,000 to 100,000 shillings	The standards of living are different in different areas across the country. Using a plain grouping would place some people at a disadvantage e.g. a person earning 13,000 in Vihiga is placed on the same level as a person earning the same 13,000 in Nairobi. The person in Vihiga can afford to make higher voluntary contributions hence will have a better credit score	There should be a different scale for rural areas and urban areas	This will create a level playing field, since the principle for loan processing is first in first out.
Sec 3 (2) (c)	Affordable housing scheme means mortgage gap housing designated for monthly income earners earning between 50,000 to 100,000 shillings	Since this amount is considered as a mortgage for this group of income earners, it should be deductible before calculation of PAYE	Affordable housing scheme means mortgage gap housing designated for monthly income earners earning between 50,000 to 100,000 shillings that shall be deductible for tax purposes	This will encourage employees to apply for the scheme and will reduce resistance to change
Sec 3(2)	Meaning of affordable housing scheme	The earnings stated to qualify for affordable housing do not indicate whether they are gross or net income of individuals.	Social housing designated for monthly income earners earning between 0 – 14,999 after tax	This will enable more contributors benefit from the affordable housing schemes. Using gross pay as a basis will lock out contributors, who also have challenges obtaining suitable housing.
Sec 4 (1) Registration of employer	Every employer who, under a contract of service, employs one employee or more shall register with the Housing Fund as a contributing employer and shall register his or her employee or employees as members of the Housing Fund.	Section 31 of the Employment Act provides for house allowance Employers are already contributing to the employees' pension scheme. It is not clear how the employers will benefit from the contributions they pay for the fund. It is not explained how the employers will be facilitated in cost reduction.	Every employer...shall register with the Housing Fund as a contributing employer... and the amounts contributed shall be allowable expenses for tax purposes	Employers will have an incentive to join this scheme. What has been highlighted in Section 4 (6) is the punishment for non-registration. It is important to give employers something to look up to since they are also stakeholders

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Sec 4 (2) Mandatory Registration of employer and employee	(2) Every employee who is under a contract of service shall register with the Housing Fund as a contributor employee.	Most employees are servicing mortgages and loans regarding housing.	Amend to exempt such employees from mandatory contribution upon proof of mortgage/home ownership loan plan. If this is not granted, conversation/transfer of inaccessible individual contributions into a pension plan accessible by the contributor and the beneficiaries	This is like a direct tax charged on their pay slip which they might not afford.
Sec 4(2) Mandatory Registration of employer and employee	(2) provides that every employee who is under a contract of service shall register with the Housing Fund as a contributor employee.	There are employees who own their dwelling houses, other are not interested in the fund and thus should not be forced to join or contribute. Why force someone to contribute to a fund that he/she will not benefit from?	To delete every employee is mandatory to register and make it voluntary, same as self - employed individuals.	A Constitutional right has been infringed i.e. Equality and freedom from discrimination " (4) <u>The State shall not discriminate directly or indirectly against any person on any ground</u> , including race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth." All employees are discriminated just because they are employed. They are forced to join the fund while individuals who are unemployed and or self-employed (rest) have a voluntary option of joining the fund. Before the law whether employed or not we are equal and should be treated equally.
Sec 6 Voluntary Contributions	Provides that every voluntary member shall contribute to the Housing Fund	It is not clear whether those with irregular incomes can make lump sum payments. It is not also specified who qualifies to be a voluntary contributor	Amend to clearly define who a voluntary contributor is and the mode of payment	This will provide clarity
Sec 10(b)	Termination of a member's account.	How does one cease to be a member? In the regulations there are limited ways of terminating members account	There should be clear conditions/reasons that may lead to the termination of a member's account. Clause 10 (b), should continue reading..." either by death OR on attainment of specified mandatory age, unless a member wishes to voluntarily continue membership"	This will provide clarity. This will enhance members' right to exit membership.
Sec 12 Access to contributions	Contributions by individuals shall only be accessed after five years of uninterrupted contribution	A period of 5 years is long for someone to acquire housing funds that he/she is contributing.	Individuals should be allowed to access their contributions to offset a mortgage or housing loan within 3 years not 5 years as stated.	Reasonable timeline and maturity after 3 years will enable someone to acquire housing.

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Sec 12 Access to contributions	Access to contributions	There is need to clarify whether all contributors can access their contributions for purposes of offsetting housing loans, security for mortgage or housing development. Secondly, whether employer contribution can be used for the above purposes	Contributors shall be able to access their own and employer contributions for purposes of offsetting housing loans, security for mortgage or housing development.	High earning contributors should not be discriminated against. Secondly, there is silence on what happens to the employer contribution for the high earners. The Act appears to imply that it's only the employee contribution that will be transferred to a pension scheme.
Sec 12 Access to contributions	Access to contributions	Access is so limited	Extend clause 12 to include access for land acquisition and fully construct and hand over a house to members....	This is necessary to simplify house ownership.
Sec 12 as read with Section 2	Contributions shall only be accessed for purposes of offsetting housing loans, security for mortgage or housing development after FIVE years of uninterrupted contribution.	Most low-income earners do not have a stable job; hence they may be unable to meet this threshold of five years of uninterrupted contribution	The definition of 'uninterrupted contribution' in section 2 should be amended to allow for temporariness in the labor market (especially the informal sector) e.g. give a threshold of say at least 7 months in a year	This will enable many low-income earners, who are the main targets of this program to access the funding
Sec 13 Return on investment savings members	The Corporation shall set out the rate of return on investment for the contribution made by the employer and employee.	This is open ended and does not clearly spell out the criterion to be used in setting out the rate of return on investment	Amend to include a guaranteed rate of return on investment for the contributions made by the members and guideline for fixing the minimum rate of return	To avoid discretionary decisions
Sec 13	Provides for the return on savings by members	This clause is silent on how the rate will be determined.	The corporation shall set out the rate of return on investment for the contribution made by employer and employee based on the rates prevailing in the market but not less than a guaranteed rate of 5%	Need to avoid another scheme similar to NSSF, that provides below industry rates of return
Sec 16 Loan application procedure for direct lending by the Fund	Spells out the criterion for loan application under the regulations	The manual application is susceptible to manipulation	Loan applications indicated in section 16 should be automated as an added safeguard against manipulation in the use of first-in first-out principle.	This will guarantee the security of the funds
Sec 18 Conditions for disbursement of Funds.	States that the approved loan under the regulations shall be released from the Housing Fund to the Individual Housing Fund Credit Account	It is not clear how the loan applicant will access the loan from the 'Individual Housing Fund Credit account'.	Amend to provide clarity on whether Housing Fund operates like a bank in this regard or as a digital wallet.	For clarity
Sec 18	According to the provisions in S 18(3), all legal documentation and	It is not also clear if the documentation includes the title to the land on which the house is to be constructed.	Amend to provide clarity on the documentation.	For clarity

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Conditions for disbursement of funds	disbursement of funds shall be with the Corporation.			
Sec 18(1) and Sec 25	-Conditions for disbursement of funds	Who ensures the funds are utilized for intended purpose	Clause 18(1) should be extended as.... “The Corporation shall thereafter be party to any withdrawal of the loan or part of it to ensure the loan is utilized for intended purpose”	This is justified to make sure the loan is not misappropriated.
Sec 18 (3)	Conditions for disbursement of funds.	Apart from members savings, there is no extra security for the loan.	Clause 18 (3) “All legal documents...including but not limited to land title...and disbursement...”	The rationale is to stress the need for extra security and for clarity to the member.
Sec 19 Loan Interest	Provides for 7% interest rate per annum on a reducing balance for the loans granted.	The 7% interest rate per annum is too high for the fund	Delete ‘ 7 percent ’ and replace it with " 4 percent ". The fund is not profit-making entity thus should charge a very low rate of interest. Revision of rate of interest be removed from housing fund corporation to minister of housing and can only be adjusted up to a maximum of 10% on the prevailing rate of interest. Such changes will happen after a period of a minimum of 10 years has lapsed.	These means that the rates will be very stable and predictable for at least 10 years.
Sec 20 Loan charges and fees	Any person granted a loan under these Regulations shall be responsible for the charges and fees as determined by the Corporation in relation to such costs as management, facility management, insurance for both life and asset.	Adding extra charges apart from the set interest on loan is not fair to the contributors or the borrowers	Delete ‘loan charges and fees" and instead replace with ‘rates for insurance will be charged.’ The prescribed rate in section 19 will cater for other management operation related expenses.	Having a leeway for loan interest plus loan charges, and fees will over burden the contributor and the intended benefit will be lost.
Sec 21 Nomination of dependents to receive benefits.	(2) A member of the Housing Fund shall update his or her nomination under paragraph (1) at any time and, in any event, annually and the revised nomination shall be submitted to the Housing Fund.	It is not clearly stated what happens if a member fails to update his/her nomination.	Amend to clarify whether the nomination list becomes void or otherwise in the event nomination is not updated.	For clarity
Sec 21 (4)	(4) Where a person has been validly nominated under this regulation, the Corporation may decline to pay or vary the nominated beneficiary and shall furnish in writing its reasons thereof.	Circumstances under which a nomination can be declined are not specified. Additionally, this could be risky to the contributor as well as the beneficiaries.	Amend to include reasons for declining nominations by the Corporation when it happens.	This will provide clarity and clear ambiguity. The will and wishes of the Contributor should be respected

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Sec 22(1)	Survivor's Benefit	What happens when a contributor who has a loan dies? Does the fund repossess the house or offset the loan against the savings? Or the insurance will pay for the loan and the member contributions are released. This last option is preferred	The Housing Fund only considers the contributor. There are cases where a borrower has passed before offsetting the loan hence there should be clear rules on how to handle the same.	For clarity
Sec 22(6)	Survivor's benefit	According to this section, a benefit payable by the Fund upon the death of a member shall not form part of the assets in the estate of a member.	The payable payments should form part of a deceased member's estate	For clarity
Sec 22(6)	Survivor's benefit	The member benefits are an asset, why exclude it?	Clause 22(6) ... "benefit payable by the Fund upon the death of a member shall form part"	There is no justification for excluding the member's benefits from his assets.
Sec 22(6)	Survivor's benefit	It does not specify the period it will take the Fund to pay beneficiaries in case the contributor dies.	The regulations must specify exclusively and unambiguously a definite timeframe within which benefits are payable to the member on exiting the housing scheme or transferring his/her contributions or to his/her beneficiaries in the event of death. This must be no more than 60 calendar days from the date of submission of the requisite documentation.	This will provide clarity
Sec 22 (5) Survivor's benefit	(5) with regard to any nomination under this regulation.	This sub-clause is hanging and does not seem to flow with the rest of the clauses	Delete and merge with sub-clause (4)	To provide consistency and flow in meaning
Sec 25 Offences and penalties	Prescribes imprisonment for a term of two years or to a fine not exceeding ten thousand shillings or to both for those who misappropriate funds or assets.	The prescribed imprisonment term and penalty are too lenient and might not deter the vice.	Amend to read; <i>A person who misappropriates any funds or assets of the Housing Fund or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term of 5 years or to a fine not exceeding one hundred thousand shillings or to both.</i>	The penalty or punishment should be severe to act as a deterrence mechanism against pilferage of public funds.
The Bill in its entirety	N/A	There is lack of equity in the move. A very small proportion of salaried Kenyans is being forced to build houses for the majority who are in the 'informal' sector and are most likely earning much more.	Scrap the bill and instead explore other initiatives to enable Kenyans own houses e.g. subsidize building materials, streamline building approval processes and make them affordable etc.	Kenya is not a socialist society. Government should not be providing housing, it should instead create favourable conditions to enable citizens to do it by themselves.

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The Bill in its entirety	N/A	How is the fund administered?	They should be clear on the administration of the fund.	Given the past experiences from NSSF and other statutory bodies, the administration has been failing to meet the member contribution needs