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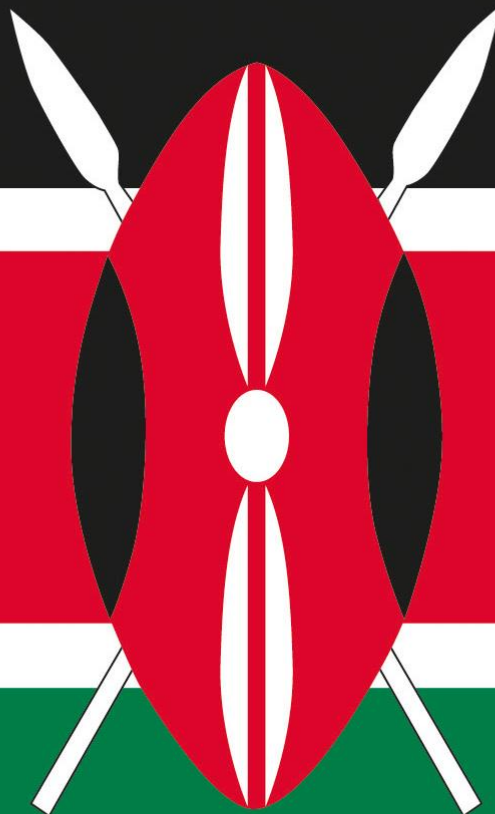
NEWSFLASH KENYA

HOUSING FUND REGULATIONS 2018

Issue:
November 2018

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→ Background

The draft Housing Fund Regulations, 2018 were released early in November 2018 following the assent of the Finance Act, 2018.

Through amendments to the Employment Act, the Finance Act, 2018 introduced a new requirement for employees to contribute 1.5 % of their monthly salary to the National Housing Development Fund. Employers are also required to match their employees' monthly contribution to the Fund. The monthly limit of the total of employee and employer contributions stands at KShs 5,000.

In this publication, we have examined the proposed Housing Fund Regulations, which, if

approved, will be contained as subsidiary legislation to the Housing Act.
Contact for further information



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→ Housing Fund Regulations

Employer and employee obligations

Every employer is required to register with the Housing Fund as a contributing employer. Any employer with employees under a contract of service is also required to register their employees as members of the Housing Fund.

Every employee under a contract of service is also required to register with the fund as a contributor employee. It is unclear from the draft Regulations whether an employee automatically becomes a "contributor employee" after being registered as a "member" of the Housing Fund by their employer.

The contributions will be paid directly to a designated Housing Fund Account. The employer is required to remit both the employee and employer contributions before the ninth of the following month.

The Regulations also state that employers are required to keep a proper and up-to-date register of employees' earnings and other particulars as may be required. The employers is required to maintain the register for a period not exceeding 10 years.

Voluntary contributions

Individuals who are self-employed may opt to register as a voluntary member of the Housing Fund.

Voluntary members are required to contribute a minimum of KShs 100 per month to accrue as a benefit. Voluntary members will also be required to contribute a minimum of KShs 100 to cover the costs and operations of the Housing Fund.

The Regulations haven't explicitly whether the contribution to cover the Fund's costs is a monthly or one-off payment.

Affordable housing relief

The Housing Fund will be classified as an affordable housing scheme as per the Income Tax Act (ITA). The ITA provides for affordable housing relief at the rate of 15 % of gross emoluments up to a maximum of KShs 108,000 per annum

The affordable housing relief shall be applicable to a resident individual who:

- Is eligible to make an application under an affordable housing scheme;
- Has applied and is awaiting the allocation of a house under an affordable housing scheme
- Is saving for a purchase under an affordable housing scheme approved by the cabinet secretary

A person who has been allocated a house under the affordable housing scheme and has been subject to an affordable relief shall not be eligible for subsequent relief.

Housing Fund Credit

The National Housing Corporation (NHC) will create an individual account known as "Housing Fund Credit" for each member which will show a full breakdown of:

- credit showing the member contributions;
- voluntary contributions;
- additional contributions;
- transfer payments into the account, if any;
- transfer payments out of the account, if any; and

Each member shall receive from the Housing Fund, at the end of every financial year, an annual benefit statement indicating the Housing Fund Credit.

Access to contributions

The Regulations state that, only after 5 years of uninterrupted contributions, will individuals be able to access their Housing Fund contributions

for purposes of offsetting housing loans, security for mortgage or housing development.

A contributor who becomes incapable of continuing the contributions to the Fund due to:

- disability or,
- not obtained a housing loan or has not been allocated a house within 15 years or has attained retirement age, whichever is sooner-

shall be eligible to a refund of his or her contribution and accrued interest which amount shall be paid within three months upon request. This payment shall accrue as follows:

1. a transfer of their contributions to a pension scheme registered with the Retirements Benefits Authority;
2. a transfer of their contributions to any person registered and eligible for affordable housing under the Housing Fund;
3. a transfer of their contributions to their spouse or dependant children; or
4. to receive their contributions in cash. However, contributions paid out in cash shall be included in the Contributor's taxable income for the year and be subjected to tax at the prevailing rates.

All contributions shall derive returns based on the return on the Fund. On an annual basis, NHC shall specify the return applicable on members' contributions into the Fund.

Eligibility for loans

The Regulations have listed the following criteria for individuals to qualify for a loan under the Housing Fund:

1. Is a Kenyan citizen
2. Has attained the age of eighteen (18) and has a national identity card
3. Proof of registration with the scheme
4. Proof of remittance of Contribution
5. Must be a first time home owner in the Scheme
- 6.

Any person who gets a loan under the Scheme shall be charged interest of 7 % by the Fund out of which:-

- 3 % shall be for the preservation of the value of the Fund

- Up to 4 % for:
 - management cost
 - insurance that includes both life and asset
 - facility management.

Nomination of dependants

Members of the Housing Fund will be required to provide details of their dependant relatives who shall receive benefits upon their death

The Regulations define a “dependant relative” as any relative of the deceased member of the Housing Fund who survives the deceased and on the date of the deceased’s death was:

1. A wife or husband of the deceased;
2. A son or daughter of the deceased who had not attained the age of 25 years; or
3. Parent, grandparent, grandchild, brother, sister, son, daughter or such other relative who was wholly or substantially dependent on the deceased for the provision of the ordinary necessities of life suitable for a person of his station

The dependants will be entitled to a survivors’ benefit, equal to the credit and interest accrued, if a member dies and was contributing at the time of their death.

Penalties

The Regulations have outlined the following offences and corresponding penalties:

- Any person who fails, neglects or refuses to register in the Fund will be liable to imprisonment of 2 years or to a fine not more than KShs 10,000 or both. A similar penalty is applicable to those who fail to make monthly contributions.
- Any employer who fails to maintain a proper register will be liable to imprisonment of 2 years or to a fine not more than KShs 10,000 or both;
- Contributing employers will be required to pay an extra 5 % of the monthly contribution due if unpaid after 1 month;
- Any person who misappropriates any funds or assets of the Housing Fund will be liable to imprisonment of 2 years or to a fine not more than KShs 10,000 or both.

In our view, a much stiffer penalty should be imposed on misappropriation of the Fund’s assets as there is possibility of gross misconduct because of the paltry penalty proposed.

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