

LEGAL NOTICE NO.....

**THE HOUSING ACT**  
*(Cap. 117)*

**IN EXERCISE** of the powers conferred by section 24 of the Housing Act, as read with section 31A of the Employment Act, 2007, the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development makes the following Regulations—

**THE HOUSING FUND REGULATIONS, 2018**

Citation.           **1.** These Regulations may be cited as the Housing Fund Regulations, 2018.

Interpretation.   **2.** In these Regulations, unless the context otherwise requires—

“Act” means the Housing Act;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to housing;

“contribution” means a contribution payable under these Regulations;

“Contributor” means a person making a contribution under these Regulations;

“Corporation” means the National Housing Corporation established by section 3 of the Act;

“Dependent Relative” in relation to a deceased member of the Fund, means any relative of the deceased who survives the deceased and who, on the date of the deceased’s death was—

(a) a wife or husband of the deceased;

(b) a son or daughter of the deceased who had not attained the age of twenty-five years; or

- (c) 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; and

“Low Cost Housing” means housing designated for income earners earning between KES 15,000 to 49,999 per month

“Mortgage Gap Housing” means housing designated for income earners earning between KES 50,000 to 100,000 per month.

“Social Housing” means housing designated for income earners earning between KES 0 to 14,999 per month;

“Uninterrupted Contribution” means a contribution made in continuity and where payments succeed each other without an interruption for a period of five years.

Affordable Housing Scheme. *Cap. 470.*

**3.** 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.

Personal tax relief.

**4.** Subject to the provisions of section 30A of the Income Tax Act, a person who has been allocated a house under the affordable house scheme provided for under regulation 3 shall be entitled to personal tax relief, but such a person shall not be eligible for subsequent relief.

Registration of employer and employee.

**5.** (1) 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.

(2) Every employee who, under a contract of service, shall register with the Housing Fund as a Contributor employee.

(3) Without prejudice to the provisions of paragraph (1), a self-employed person who wishes to become a member of the Housing Fund may register as a voluntary member.

(4) Any person who is registerable as an employer under this regulation shall—

- (a) produce proof of registration with the scheme; and

(b) be a citizen of Kenya of at least 18 years of age.

(5) The Housing Fund shall inform employers and employees of the requirement to register under these Regulations.

(6) Any person who fails, neglects or refuses to register under this regulation commits an offence and shall, upon conviction, be liable to imprisonment for a term of two years or to a fine not exceeding ten thousand shillings or to both.

(7) Any person who fails, neglects or refuses to make a contribution under this regulation commits an offence and shall, upon conviction, be liable to imprisonment for a term of two years or to a fine not exceeding ten thousand shillings or to both.

The Register.

**6. (1)** An employer registered under these Regulations shall—

- (a) keep a proper and up-to-date register or record of the earnings and any other particulars of employees as may be specified by the Corporation;
- (b) at all times produce the register or record on demand by a compliance or other officer of the Fund; and
- (c) retain such register or record for such period as the Corporation may specify, but such period shall not exceed ten years.

(2) A person who violates any of the provisions of paragraph (1) commits an offence and shall, upon conviction, be liable to imprisonment for a term of two years or to a fine not exceeding ten thousand shillings or to both.

Voluntary contributions.

**7. (1)** Every voluntary member shall contribute to the Housing Fund—

- (a) a minimum contribution of one hundred shillings designated to cover the costs and operations of the Housing Fund; and
- (b) a minimum amount of one hundred shillings per month to accrue as a benefit to the member.

(2) The contributions made under paragraph (1) shall be paid into the Housing Fund and immediately credited to the member's individual account as the Housing Fund Credit provided for under regulation 10.

Mode of payment.

**8.** (1) Contributions may be paid directly to a designated Housing Fund Account, specified by the Corporation.

(2) The Housing Fund shall notify the member of the receipt of the contribution as soon as the contribution is received.

Additional contributions.

**9.** Every member of the Housing Fund may make additional contributions which shall be credited to member's individual account as the Housing Fund Credit.

Creation of individual accounts for members of the Housing Fund.

**10.** (1) The Corporation shall cause to be established and maintained for each member of the Housing Fund, an individual account to be known as the Housing Fund Credit to which shall be credited all contributions made to the Housing Fund by and in respect of each member of the Housing Fund.

(2) The individual Housing Fund Credit shall, in respect of each member of the Housing Fund, at any particular date, show a full break down of—

- (a) credit showing the member contributions;
- (b) voluntary contributions;
- (c) additional contributions;
- (d) transfer payments into the account, if any;
- (e) transfer payments out of the account, if any; and
- (f) interest credited into the account, if any.

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

(4) Notwithstanding the provisions of paragraph (3), a member may, upon giving sufficient written notice to the Housing Fund, obtain a benefit statement.

(5) Where the Housing Fund has availed the information herein

required online, a member may obtain the same online information and the Housing Fund shall ensure that the information online is up to date and sufficient for purposes of getting the information required under this regulation.

(6) Where the information required cannot be obtained or a member is incapacitated to access the information electronically, the Housing Fund shall give general notice to members informing them to access the information from the Housing Fund manually at specified offices situated in locations convenient to the members.

Termination of a member's account.

**11.** (1) The account of a member established under regulation 9, shall be deemed closed when—

- (a) all the moneys due from that account have been paid out of that account in accordance with these Regulations;
- (b) the member has ceased to be a member of the Housing Fund; and
- (c) no claim by or on behalf of that member to any benefit is pending determination.

Penalty for default in payment and incorrect contributions.

**12.** (1) If any contribution for which a contributing employer is required to pay to the Housing Fund is not paid within one month after the end of the month in which the last day of the contribution period to which it falls, a sum equal to five per cent of the amount of that contribution shall be added to the contribution for each month or part of a month that the amount due remains unpaid, and any such additional amount shall be recoverable at the same time and in the same manner as the contribution to which it is added.

(2) Where it is established by a member or officer of the Fund to the satisfaction of the Corporation that any amount has been paid to the Fund as a contribution when it was not payable under these Regulations and the amount was paid as a result of a *bona fide* error, the amount paid in error shall be refunded without interest thereon or may be applied, with the consent of the person who made the payment, to any current liability of that person to the Fund.

(3) Any amount which is payable under these Regulations as a contribution by an employer in respect of himself or herself or his or her employee that is in excess of the statutory contribution payable under these Regulations for any period, the amount in excess shall be refunded to the employer or employee, as the case may be, without interest thereon or may be applied, with the consent of the employer or employee, to any current liability of the employer or employee to the Housing Fund.

Access to contributions.

**13.** (1) Contributions by individuals shall only be accessed for purposes of offsetting housing loans, security for mortgage or housing development after five years of uninterrupted contribution and shall attract such an annual return as may be determined by the Corporation.

(2) 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-

- (i) a transfer of their contributions to a pension scheme registered with the Retirements Benefits Authority;
- (ii) a transfer of their contributions to any person registered and eligible for affordable housing under the Housing Fund;
- (iii) a transfer of their contributions to their spouse or dependant children; or
- (iv) to receive their contributions in cash.

Provided that 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.

(3) All contributions shall get return based on the return on the Fund.

(4) The employer shall remit both the employee and employer contributions to the Housing Fund before the 9<sup>th</sup> of the following month.

Prescribed return on investment on Savings by Members

**14.** The Corporation shall prescribe the rate of return on investment for the contribution made by the employer and employee.

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Return on contributions by members.

**15.** The Corporation shall, on an annual basis specify the return applicable on members' contributions into the Housing Fund.

Eligibility criterion for grant of loan under the Fund.

**16.** A person shall qualify for the scheme if they meet the following requirements:-

- i) Is a Kenyan citizen
- ii) Has attained the age of eighteen (18) and has a national identity card

- iii) Proof or registration with the scheme
- iv) Proof of remittance of Contribution
- v) Must be a first time home owner in the Scheme

Loan application procedure for direct lending by the Fund.

**17.** Subject to section 16 above, a member who meets the criteria set out in guidelines to set up by the Corporation, and wishes to borrow a loan from the Housing Fund shall make an application to the Corporation in such a manner as may be specified by the Corporation.

Nomination of dependants to receive benefits.

**18.** (1) Every person entitled to become a member of the Housing Fund shall furnish to the Housing Fund, in the manner specified, particulars concerning himself or herself and his or her dependant relatives who shall receive benefits upon his death.

(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.

(3) A member's nomination under this regulation shall be regarded by the Corporation to be his or her absolute intention and the Corporation shall not be responsible for any errors of omission or inclusion contained in the nomination.

(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.

Survivors' benefit.

**19.** (1) A survivors' benefit shall be paid to the dependants, if the member dies and was contributing to the Fund at the time of his or her death.

(2) The survivors' benefit payable under paragraph (1) shall, in aggregate, be equal in value to the member's Housing Fund Credit and interest accrued.

(3) The survivors' benefit payable under paragraph (2) shall be held by the Corporation on trust, and paid to the nominated beneficiary upon application by the beneficiaries in such proportions as stipulated by the member for the absolute use and benefit of the beneficiary.

(4) Despite the provisions of paragraph (3), the Corporation may exercise its option under regulation 18

(4) with regard to any nomination under this regulation.

(5) Subject to any other written law, 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.

### **Interest on Loans**

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

- i) 3% shall be for the preservation of the value of the Fund
- ii) Up to 4% for:
  - management cost
  - insurance that includes both life and asset
  - facility management.

### **Budget Approval Process**

**21.** The budget of the Fund shall be approved by the Corporation.

Retention of receipts and earnings.

**22.** All receipts, earnings and accruals to the Housing Fund, and the balance of the Housing Fund at the close of each financial year shall be retained by the Fund for the purposes of the Fund.

Offences and penalties.

**23.** 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 two years or to a fine not exceeding ten thousand shillings or to both.

Winding up.

**24.** In the event of winding up of the Housing Fund, the cash balances shall be transferred to the Exchequer while other assets of the Fund shall be transferred to the Ministry in charge of housing to facilitate appropriate refunds to the contributors.

Made on the....., 2018.

**James Macharia,**  
*Cabinet Secretary for Transport,  
Infrastructure,  
Housing, Urban Development and Public Works.*