

# The Housing Fund Regulations, 2018



Pursuant to Section 31A of the Employment Act and Section 24 of the Housing Act, the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development has published the much awaited Housing Fund Regulations, 2018 for public comments.

The National Housing Development Fund, whose implementation the Regulations are meant to guide, was initially proposed at the rate of 0.5% of the gross emolument. However, the Finance Act 2018 raised this rate to 1.5% and pegged implementation on enactment of the Regulations which we analyze in this alert.

The Regulations are subsidiary legislation meant to facilitate the efficient implementation of the Employment Act and Housing Act

# The Housing Fund Regulations, 2018

We provide our analysis of the new Regulations below

Regulation No	Regulation	Comment
<b>Regulation 1 &amp; 2 – Citation and Interpretation</b>	Some of the key terms highlighted in the regulations are as follows:	This is the interpretative section of the law and it has shed light on new aspects contained in the regulations that were not provided for in the Finance Act 2018 provisions.
	“Low Cost Housing” means housing designated for income earners earning between KES 15,000 to 49,999 p.m.	
	“Mortgage Gap Housing” means housing designated for income earners earning between KES 50,000 to 100,000 p.m.	The regulations clearly provide for employees who qualify for the different type of housing.
	“Social Housing” means housing designated for income earners earning between KES 0 to 14,999 p.m.	It is however, worthy to note that all employees are required to make contributions to the Fund and not only those who qualify for the housing.
<b>Regulation 4 - Personal tax relief</b>	A person who has been allocated a house under the affordable house scheme shall be entitled to personal tax relief, but such a person shall not be eligible for subsequent relief	Subject to the conditions outlined under section 30A of the ITA as amended by the Tax Laws Amendment Act.  The relief shall be 15% of the gross emoluments but shall not exceed KES 108,000 p.a. (KES 9,000 p.m)
		The relief shall only be granted once i.e. on the first house purchase. Any subsequent purchases of houses under the scheme shall not be eligible for a relief.
<b>Regulation 5 - Registration of employer and employee</b>	Employers are required to register with the housing fund as a contributing employer and register employees as members	The regulation requires all employers with employees under a contract of service to register with the fund.
	A self-employed person may register to become a member of the Fund voluntarily.	The regulations do not however, provide timelines as to when the employer should register with the Fund.
	Failure to register or contribute to the Housing Fund shall attract a penalty of two years imprisonment or a fine not exceeding KES 10,00 or both	



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<b>Regulation 6 - The Register</b>	Every employer registered under the Fund shall be required to maintain proper records of employees for a period not exceeding 10 years	For purposes of compliance with the law, employers are expected to maintain proper documentation.
	Failure to maintain such records shall attract a fine not exceeding KES 10,000 or two years imprisonment or both.	
<b>Regulation 7 - Voluntary</b>	Every voluntary member shall contribute to the Housing Fund—  a) a minimum contribution of KES 100 designated to cover the costs and operations of the Housing Fund; and  b) a minimum amount of KES 100 to accrue as a benefit to the member.	Voluntary members will only be required to contribute KES 100 as opposed to the rate 1.5% applicable to employees.
<b>Regulation 9 - Additional contributions</b>	Every member of the Housing Fund may make additional contributions which shall be credited to member's individual account as the Housing Fund Credit.	The regulation allows for any member to make further contributions to the fund.
<b>Regulation 10 - Creation of individual accounts for members of the Housing Fund</b>	The Corporation shall establish and maintain an individual account for each member.  Each member shall receive an annual benefit statement upon giving sufficient written notice to the Housing Fund.	Members of the Fund will be able to monitor their contributions.  This will help to increase compliance especially for employers who deduct such contributions from employees and fail to remit them in accordance to the law.
<b>Regulation 11 - Termination of a member's account</b>	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 the 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.	The regulations do not provide a clear explanation on the circumstances that terminate one's membership of the Housing Fund.

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<b>Regulation 12 – Penalty for default in payment and incorrect contributions</b>	<p>Late contribution to the fund by the employer shall attract a penalty of 5%.</p> <p>Where a member or employer of the Fund makes a contribution in error, the amount so paid shall be refunded or be applied, with the consent of the person who made the payment, to any current liability of that person to the Fund</p>	<p>This provision is aimed at encouraging compliance. Employers are required to remit the contributions to the Housing Fund before the 9<sup>th</sup> day of the following month.</p> <p>The regulations do not however, specify the duration for claiming the refund amount paid in error.</p>
<b>Regulation 13 – Access to contributions</b>	<p>a) Contributions by individuals shall only be accessed for purposes of;</p> <ul style="list-style-type: none"> <li>– offsetting housing loans,</li> <li>– security for mortgage or;</li> <li>– housing development after five years of uninterrupted contribution</li> </ul> <p>The contributions shall attract such an annual return as may be determined by the Corporation.</p> <p>b) 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.</p> <p>The payments shall accrue in the following manner;</p> <ul style="list-style-type: none"> <li>i. a transfer of their contributions to a pension scheme registered with the Retirements Benefits Authority;</li> <li>ii. a transfer of their contributions to any person registered and eligible for affordable housing under the Housing Fund.</li> <li>iii. A transfer of their contributions to their spouse or dependant children; or</li> </ul>	<p>The regulations provide for circumstances as to when a member of the fund can access their contributions.</p> <p>Access to contributions is pegged on five years of uninterrupted contributions.</p>

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<b>Regulation 13 contd'</b>	iv) to receive their contributions in cash	Contributions received in cash will be deemed a taxable income to the member receiving such payments.
<b>Access to contributions</b>	<p><b>NB:</b></p> <ul style="list-style-type: none"> <li>– The refund amount shall be inclusive of contributions and accrued interest which shall be paid within 3 months upon request.</li> <li>– 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</li> <li>– All contributions shall get return based on the return on the Fund.</li> </ul>	
<b>Regulation 14 &amp; 15 – Prescribed return on investment on savings by members</b>	<p>The Corporation shall prescribe the rate of return on investment for the contribution made by the employer and employee.</p> <p>The corporation shall specify the return applicable on member's contribution on an annual basis</p>	The rate of return is dependant on the rate provided for by the Corporation and shall be given annually.
<b>Regulation 16 – Eligibility criterion for grant loan under the Fund</b>	<p>The following requirements must be met for one to qualify for the scheme;</p> <ol style="list-style-type: none"> <li>Is a Kenyan citizen</li> <li>Has attained the age of eighteen (18) and has a national identity card</li> <li>Proof or registration with the scheme</li> <li>Proof of remittance of Contribution</li> <li>Must be a first time home owner in the Scheme</li> </ol>	<p>The Regulation sets out the eligibility requirements for a member who wishes to obtain a loan under the Fund.</p> <p>The loan shall however be applicable to members who are first time home owners in the Scheme as provided for under Regulation 2.</p>



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<b>Regulation 18 – Nomination of dependants to receive benefits</b>	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.	Benefit to dependants will only accrue where a person has been contributing continuously to the fund.
<b>Regulation 20 – Interest on loans</b>	<p>Any person who gets a loan under this Scheme shall be charged 7% by the Fund out of which:-</p> <ul style="list-style-type: none"> <li>i. 3% shall be for the preservation of the value of the Fund</li> <li>ii. Up to 4% for: <ul style="list-style-type: none"> <li>– management cost</li> <li>– insurance that includes both life and asset</li> <li>– facility management</li> </ul> </li> </ul>	<p>This regulation provides for the interest rate to be charged upon acquiring a loan from the Fund.</p> <p>The interest rate is however quite high for members wishing to access these funds bearing in mind that their income bracket as specified under regulations who range between KES 15,000 to KES 100,000 p.m.</p>
<b>Regulation 23– Offences and Penalties</b>	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 2 years or to a fine not exceeding KES 10,000 or to both.	<p>We hope that the Government will input stringent measure to ensure that the Fund will not be misappropriated and will actually be directed towards building low cost housing for taxpayers who are already weary of the heavy tax burden.</p> <p>That said, the penalties for misappropriation by officers is too low.</p>
<b>Regulation 24 – Winding Up</b>	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.	

# The Housing Fund Regulations, 2018

## Summary of Regulations

- Every employer with employees under a contract of service must to register with the fund and make contributions of 1.5% of the employee's monthly basic salary for both the employee and employer.
- Voluntary members will only be required to contribute KES 100 as opposed to the rate of 1.5% applicable to employees. The Regulations do not specify in which class voluntary members will fall under[ low cost, mortgage gap or Social Housing]
- The regulation allows for any member to make further contributions to the fund.
- Housing relief shall be granted at 15% to a maximum of KES 108,000 p.a subject to the following provisions under section 30A of the Income Tax Act as amended by the Tax Laws Amendment Act 2018.

It is worthy to note that the relief shall only be granted once and persons who have already been granted the affordable housing relief are not eligible for a subsequent relief.

- Employers shall be required to submit the funds by the 9<sup>th</sup> day of each successive month with a penalty of 5% of the contributions payable for late payment.
- Late contribution to the fund by the employer shall attract a penalty of 5%.





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## Get in Touch

Please get in touch with us to find out more about how this affects you.

## Contacts



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