

News Alert

The National Housing Development Fund

Background

The Government of Kenya introduced the National Housing Development Fund (the Fund) in 2018, with the intention of helping the state realise its goal of delivering 500,000 affordable housing units in five years as a means to stop the expansion of slums and informal dwellings in major towns in the country.

The Fund, which aims to provide low-cost housing, is one of President Uhuru Kenyatta's legacy projects and is in line with the Big 4 Agenda.

Publication of the Housing Fund Regulations

The Housing Fund Regulations, 2018 (the Regulations) were gazetted on Friday 21 December 2018 and require that:

1. every employer who employs one or more employees under a contract of service registers as a contributing employer with the National Housing Development Fund; and
2. every employer registers his or her employees as members of the National Housing Development Fund.

It is an offence under the Regulations to fail to register or contribute to the Fund and, upon

conviction, an offending party shall be liable to imprisonment for a term of two years or to a fine not exceeding KES 10,000 or both.

Contribution to the Fund

The Finance Act 2018 amended Section 31 of the Employment Act and introduced a mandatory obligation on an employer and an employee to contribute to the Fund, being:

- a) an employee shall contribute 1.5 per cent of his or her monthly basic salary to the Fund; and
- b) an employer shall also contribute 1.5 per cent of the employee's monthly basic salary to the Fund.

The maximum that an employer can contribute is KES 2,500 per month while the maximum an employee can contribute is KES 2,500 per month making a collective total of KES 5,000 per month.

Challenges

The Central Organization of Trade Unions (COTU) and the Federation of Kenya Employers (FKE) moved to court to challenge the implementation of these contributions and the establishment of the Advisory Board to the Fund respectively. Brief details of both cases are provided below.

i. The COTU Petition

COTU moved to court seeking the suspension of mandatory payment of contributions to the Fund. COTU opposed the introduction of these new contributions on the ground that there was no public participation in the decision-making process.

Justice Hellen Wasilwa issued interim orders on 19 December 2018 suspending payment of contributions to the Fund until 21 January 2019. The court subsequently extended the interim orders until 20 May 2019, when the application is scheduled to come up for mention for further orders.

ii. The FKE Petition

FKE moved to court seeking the suspension of the establishment of the Advisory Board to the Fund (the Advisory Board) on the ground that there was no public participation. The Cabinet Secretary for the Ministry of Transport, Infrastructure, Public Works, Housing and Urban Development (the Cabinet Secretary) had sought to convene the Advisory Board through media advertisement on 24 December 2018.

On 9 January 2019 Justice Nelson Abuodha issued interim orders until 24 January 2019 preventing the Cabinet Secretary from proceeding with any actions aimed at appointing members of the Advisory Board and/or establishing the Advisory Board.

On 17 April 2019, the court ordered that the FKE Petition be consolidated with the COTU Petition which is now scheduled to come up for mention on 20 May 2019 for further orders.

Recent developments

On 16 April 2019 the Kenya Revenue Authority (the KRA) together with the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works issued a Public Notice announcing that contributions to the Fund will be effective from 9 May 2019. This Public Notice was issued despite the fact that there is a court order in force suspending the payment of the contributions pending the outcome of the proceedings.

Conclusion

Based on the existing court order and pending further directions by the court on 20th May 2019, employers and employees are not required to make payments to the Fund.

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