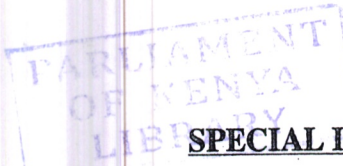


Annex I



SPECIAL ISSUE

3167

Kenya Gazette Supplement No. 154

18th December, 2018

(Legislative Supplement No. 74)

LEGAL NOTICE NO. 238



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 and Public Works makes the following Regulations—

THE HOUSING FUND REGULATIONS, 2018

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

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

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

- (a) a spouse of the deceased;
- (b) a child of the deceased; or
- (c) a beneficiary nominated by the deceased.

“employee” has the meaning assigned to it under section 2 of the Employment Act; No. 11 of 2007.

“employer” has the meaning assigned to it under section 2 of the Employment Act;

“Housing Fund Account” means an account created for each member where mandatory and voluntary contributions accrue;

“member” means a person who is registered with the Housing Fund; and

“voluntary member” means a member who is self-employed, retired or not registered under an employer but makes monthly contributions in accordance with these Regulations.

3. (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.

Affordable
housing scheme.
Cap. 470.

(2) For the purposes of these Regulations, an “affordable housing scheme” means—

- (a) social housing designated for monthly income earners earning up to 19,999 shillings;
- (b) low cost housing designated for monthly income earners earning between 20,000 to 49,999 shillings;
- (c) mortgage gap housing designated for monthly income earners earning between 50,000 to 149,999 shillings; or
- (d) middle to high income housing designated for monthly income earners earning 150,000 shillings and above:

Provided that an individual's affordable housing scheme shall be based on the monthly income as at the date of application for a loan, housing or any other benefit or entitlement from the Housing Fund.

4. (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.

Registration of
employer and
employee.

(2) Every employee who is under a contract of service shall register with the Housing Fund as a contributing employee, unless that employee is a foreigner working in Kenya.

(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 registrable as an employer under this regulation shall—

- (a) produce proof of registration with the affordable housing scheme; and
- (b) be a citizen of Kenya of at least 18 years of age.

(5) 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.

(6) Any employer 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.

5. (1) An employer registered under these Regulations shall— The Register.

- (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 six years after termination.~~

(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.

6. (1) Every voluntary member shall contribute to the Housing Fund— Voluntary contributions.

- (a) one hundred shillings per month that shall accrue to the Housing Fund; and
- (b) a minimum of one hundred shillings per month that shall accrue to the member's Housing Fund Account.

(2) The contributions made under paragraph (1) shall be paid into the Housing Fund as provided for under section 31A of the Employment Act and immediately credited to the member's individual account as the Housing Fund Account provided for under regulation 9.

7. (1) Contributions shall be paid directly to a designated Housing Fund Account as may be specified by the Corporation. Mode of payment.

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

8. Every member of the Housing Fund may make additional contributions which shall be credited to member's individual account as the Housing Fund Account. Additional contributions.

9. (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 member's Housing Fund Account to which shall be credited all contributions made to the Housing Fund by and in respect of each member of the Housing Fund. Creation of individual accounts for members of the Housing Fund.

(2) The individual Housing Fund Account 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 summary of the member's Housing Fund Account.

(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.

10. (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.

Termination of a member's account.

11. (1) 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.

Incorrect contributions.

(2) Any amount which is payable 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 the relevant law or these Regulations for any period, the amount in excess shall be refunded to the employer or employee, as the case may be, within three months and without interest thereon or may be applied, with the consent of the employer or employee, to any current liability or future obligation of the employer or employee to the Housing Fund.

(3) Where excess contributions are to be applied to any current or future obligations, they shall be applied immediately the consent of the employer or employee is obtained.

12. The Corporation shall set out the rate of return on contributions made by members.

Return on investment on savings by members.

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

Return on contributions by members.

14. A person shall qualify for the affordable housing scheme if that person—

Eligibility criteria for affordable housing scheme.

- (a) is a Kenyan citizen of 18 years of age;
- (b) has proof of registration with the affordable housing scheme;
- (c) has proof of up to date remittance of the contribution; and
- (d) is a first time home owner under the affordable housing scheme.

15. (1) Subject to regulation 14, a member shall qualify for a loan for affordable housing if that member meets the criteria set out in these Regulations and guidelines by the Corporation.

Loan application procedure for direct lending by the Fund.

(2) A person who wishes to be granted a loan from the Housing Fund shall make an application to the Corporation in such a manner as may be specified by the Corporation.

(3) Despite the generality of paragraph (2), an application for a loan under these Regulations shall be accompanied by the following documents, where appropriate —

- (a) duly filled application Form by the applicant;
- (b) certified copies of pay-slips for the immediate last three months by the respective accounting officers or certified current bank statements for the last six months;
- (c) a certified copy of the National Identify Card or Passport; and
- (d) a non-refundable application fees of one thousand shillings or as determined from time to time by the Corporation.

16. (1) The Corporation shall use the following eligibility criteria when evaluating a loan application—

Eligibility criteria.

- (a) first in first out principle of loan processing;
- (b) applicable loan threshold for each grade of the beneficiary;
- (c) compliance with the provisions of regulation 15(3);
- (d) ability to repay the loan within existing statutes and the stipulated time;
- (e) no borrower shall be eligible for more than one loan at a time from the Housing Fund within a five year period; and
- (f) any other conditions as may be specified by the Corporation.

17. (1) A loan approved by the Corporation under these Regulations shall be released from the Housing Fund to the Individual Housing Fund Account.

Conditions for disbursement of Funds.

(2) During the loan repayment period the beneficiary shall—

- (a) not lease, sell or agree to sell or part with possession of the charged house or any part of the house without the prior written consent of the Corporation;
- (b) meet costs for the insurance cover, if any, and pay such sum of money as may be determined by the Corporation from time to time;
- (c) maintain the house in a satisfactory state of repair.

(3) All legal documentation and disbursement of funds shall be with the Corporation.

18. A loan granted to a member under these Regulations shall carry an interest rate of up to seven per cent per annum on a reducing balance basis which shall be retained in the Housing Fund or such other rate as may from time to time be determined by the Corporation in a gazette notice.

Loan interest.

19. A person granted a loan under these Regulations shall be responsible for the charges and fees to be determined by the Corporation in relation—

Loan charges and fees.

- (a) to preservation of the value of the Housing Fund;
- (b) to management costs;
- (c) to insurance for both life and asset; and
- (d) to facility management costs.

20. (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 dependants who shall receive benefits upon his or her death.

Nomination of dependants 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.

(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.

21. (1) A deceased member's contribution shall be paid to the dependants, if the member dies and was contributing to the Fund at the time of his or her death.

Survivors' benefit.

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

(3) The deceased member's contribution 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 20(4) with regard to any nomination under this regulation.

(6) 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.

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.

Retention of receipts and earnings.

23. The budget of the Housing Fund shall be approved by the Corporation.

Budget approval.

24. 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.

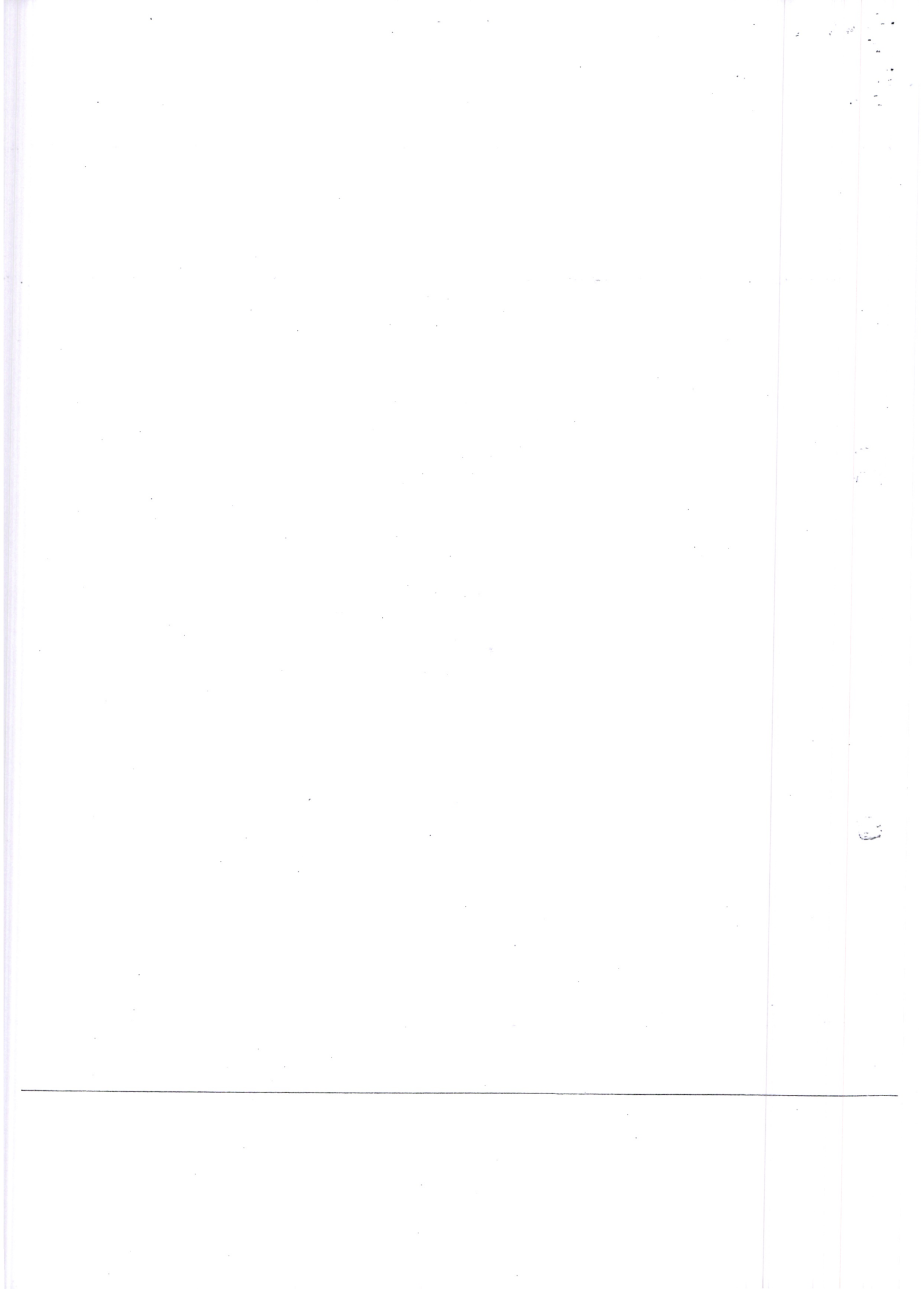
Offences and penalties.

25. 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.

Winding up.

Dated the 17th December, 2018.

JAMES MACHARIA,
*Cabinet Secretary for Transport, Infrastructure,
Housing, Urban Development and Public Works.*



Annex IV

EXPLANATORY MEMORANDUM TO THE HOUSING FUND REGULATIONS, 2018

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1. The Purpose of the Housing Fund Regulations, 2018

The purpose of these Regulations is to:

- Enhance access to long-term financing facility that will allow individuals to switch over their rent payment to a payment towards home ownership;
- Provide financing facilities that would be accessible to qualify home buyers both in the formal and informal sectors in the economy;
- Support the development of homes for Kenyans who have otherwise remained unserved;
- Unlock opportunities for job creation, increased economic activity in the construction sector and related services;
- Attract private capital into the country for the purpose of financing affordable housing projects;
- Enable a self-sustaining construction sector as projects mature and reach scale;
- Allow for bulk off take of units from developers thereby bridging the housing deficit in the country;
- Restore human dignity by enabling Kenyans from across all walks of life have access to homes;
- Reduce poverty levels by providing an intricate basic need (housing) to all Kenyans
- Support value addition initiatives by special groups such as the youth, women, and the disabled; and
- Create human settlements that will allow a live, work, play aspect that is important to all families.

2. The Legislative Context

- The process of developing the Housing Fund Regulations started in 1953 when the Housing Fund (“the Fund”) was established under Section 6 of the Housing Act Cap 117 under control of National Housing Corporation (“NHC” or the “Corporation”). These Regulations, only operationalize the Fund under an already existing Act. This has been further necessitated by unveiling of the “Big Four” transformation agenda which identified four priority initiatives to be implemented over the next five years being 2017-2022 which are improving food security, **affordable housing**, universal health care and increasing the share of manufacturing in the economy.

The development of the Housing Fund Regulations, 2018 was guided by the following considerations; (i) to provide affordable housing is in line with the Constitutional provisions of Article 43(1) (b) for decent and adequate housing, the Country's Urban Development Policy, and the New Urban Agenda which is the urbanization blueprint under the United Nations and particularly UN-Habitat and its government partners, of which Kenya is one; (ii) ensuring the Housing Fund Regulations encapsulates best practices in terms of governance structure at the national level; and (iii) the need to allow and bolster the Housing Act to achieve its objective of providing housing to all Kenyans.

These Housing Fund Regulations, 2018 are therefore firmly anchored in Section 6 of the Housing Act, 1953.

3. Policy Background

Parliament enacted the Housing Act in 1953 and over the years Kenya has been without much success trying to bridge the housing deficit as the population continues to grow hence the Affordable Housing Agenda Program ("AHP") that is aimed at addressing this issue. The Act on its own, however, is not sufficient since it does not provide guidelines on all matters relating to housing at the national and county levels of government. In order to provide further clarity on various aspects of providing housing to all Kenyans across board, it is therefore necessary to have regulations to govern to operationalize the Housing Fund established in line with Section 6 of the Housing Act.

Delivery of the affordable housing agenda requires significant financing to ensure the **supply, demand** and **affordability** of the housing agenda is attained. AHP is estimated to cost KES 1.4 trillion for the development of 500,000 homes. This is a significant capital requirement that cannot be met through budgetary appropriation.

The State Department of Housing and Urban Development ("SDHUD"), therefore, prepared a **development and financing framework** that will provide the Government with an avenue to unlock private capital and allow private sector to participate in providing development finance for the program, as well as ensure that more Kenyans are able to afford homeownership. Unlocking private capital for the AHP is critical given limited budgetary resources and the expansive capital required for the program.

The Fund requires regular contributions to form a stable source of capital which can be leveraged to provide long term affordable financing for homebuyers as well as support the offtake.

The employer and employee contribution was introduced under Section 31 of the Employment Act which requires Employers to provide workers with housing close to

their place of work. In the amended Section 31 (A), the employer and employee will each pay a contribution of 1.5% of gross emoluments which are channeled to the Fund.

This amendment was passed in the Finance Act, 2018 and was to be operationalized upon gazettelement of the Housing Fund Regulations.

It is important to note that even as the contributions have been introduced, in the Tax Amendments law, an affordable housing tax relief was passed. This affordable housing tax relief provides for the tax burden of those registered and saving towards a house under the AHP to be reduced. The intention of the relief is to ensure that those saving and contributing towards a home are not disadvantaged from an income point of view.

Some of the salient features of these regulations are:-

- The Fund is established under Section 6 of the Act, and Section 24 which gives powers to the Cabinet Secretary /Housing to make Regulations for the better carrying out of the objectives of the Housing Act.
- These Regulations shall be cited as *Housing Fund Regulations, 2018*.
- These Regulations have been divided into 23 parts namely: Part I: Preliminary; Part II: Registration of Employer and Employee; Part III: The Register; Part IV: Voluntary Contributions; Part V: Mode of Payment; Part VI: Additional Contributions; Part VII: Creation of Individual Accounts for Members of the Housing Fund; Part VIII: Termination of a Member's Account; Part IX: Incorrect Contributions; Part X: Return on Investment on Savings by Members; Part XI: Return on Contribution by Members; Part XII: Eligibility Criteria for Affordable Housing Scheme; Part XIII: Loan Application Procedure for Direct Lending by the Fund; Part XIV: Eligibility Criteria; Part XV: Conditions for Disbursement of Funds; Part XVI: Loan Interest; Part XVII: Loan Charges and Fees; Part XVIII: Nomination of Dependants to receive Benefits; Part XIX: Survivors' Benefit; Part XX: Retention of Receipts and Earnings; Part XXI: Budget Approval; Part XXII: Offences and Penalties; and Part XXIII: Winding Up
- In line with Section 6 the Housing Act, the Fund is under the control of the NHC and as such the NHC Board is charged with governance over the Fund.
- Through administrative action, the NHC Board will establish guidelines that will seek to address how the governance structure can be bolstered to ensure that the Fund achieves its mandate while simultaneously addressing the concerns raised by Kenyans on transparency and accountability.
- Some of the issues to be addressed include management of monies received through contributions, fair and transparent allocation of housing units, proper record keeping and reporting, as well as general governance structures.

4. Public Consultations

- The Housing Fund Regulations, 2018 have taken into account the views of key stakeholders. The following key stakeholders were identified and engaged on the contribution:
 - Central Organization for Trade Unions (COTU);
 - Federation for Kenyan Employers (FKE);
 - Kenya National Union of Teachers(KNUT);
 - National Treasury (NT);
 - Attorney General (AG);
 - Public Service Commission (PSC);
 - Financial Institutions;
 - SACCOs & Cooperatives;
 - Pension Funds;
 - Various appearances in television and radio stations as well as publications in the dailies aimed at providing information to the public regarding the Housing Fund;
 - The National Assembly Committee on Transport, Public Works and Housing; and
 - The Senate Committee on Roads and Transportation
- Engagements with these stakeholders have taken place over the course of last year to understand the AHP as well as the role of the contributions to the Housing Fund.
- In addition, the Housing Fund Regulations were drafted and published in line with the required legal process which entailed:
 - Preparation of layman's draft.
 - Consultation by the Attorney General (AG), National Treasury and SDHUD.
 - Public Participation through publishing the regulations on the SDHUD website during the period of 5th November 2018 until 22nd November 2018.
 - 248 comments were received after publication of the public participation process which were addressed through a matrix and various amendments of the Housing Fund Regulations. The Matrix is enclosed herein.
 - Regulations were published and gazetted by the Cabinet Secretary responsible for Ministry of Transport, Infrastructure, Housing and Urban Development (MoTIHUD) in line with s. 24 of the Housing Act on 18th November, 2018.
 - Review by the Delegated Committee and Parliament - Ongoing.

5. Guidance

The Ministry of Transport, Infrastructure, Public Works, Housing and Urban Development (MoTIHUD) has and continues to sensitize stakeholders including Parliament, accounting officers of national government and the general public, on the provisions of the Housing Fund Regulations, 2018, the accountability mechanism, the monitoring and evaluation mechanism.

6. Review of the Regulations

- MoTIHUD shall monitor the application of the Housing Fund Regulations, 2018. This will be done through quarterly reports sent by the relevant accounting officer of SDHUD. In addition, MoTIHUD will also carry out regular monitoring and evaluation of the specific provisions of these Regulations through interaction with the implementers of these Regulations, studying various reports by The National Assembly Committee on Transport, Public Works and Housing; and the Senate Committee on Roads and Transportation National Government Affirmative Action County Committee and the general public.
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- It is important to note that the Regulations shall apply from the commencement date of these Regulations. In this respect, a review thereof will be done by MoTIHUD with the approval of Parliament in line with Section 24 of the Housing Act.

7. **Ministry of Housing Contact Person.**

The contact person at the Ministry of Transport, Infrastructure, Housing & Urban Development Cabinet Secretary, Mr. James Macharia, EGH or the Principal Secretary, of the State Department of Housing and Urban Development, Mr. Charles Hinga Mwaura.

Date.....2018

JAMES MACHARIA
CABINET SECRETARY FOR MINISTRY OF TRANSPORT,
INFRASTRUCTURE HOUSING AND URBAN DEVELOPMENT



COMMENT SHEET

Document Number & Rev	-XXX-XXX- XXX-	Document Title	HOUSING FUND REGULATIONS			
Document Receipt Date	Comments By	SDHUD	Comment Date December 2018	Review code:		
Comment Number	Comments from	Comment	SDHUD Response	Action	Close-Out Date	
1	Peter Kibe	Issue on KES 10,000 fine – Peter Kibe	No issue to be resolved in respect of the Regulations. Response: The penalties can only be subjected to those provided in the Housing Act. The Housing Act will be reviewed to address this concern.			
2	Peter Kibe	When will deductions start?	No issue to be resolved in respect of the Regulations. Response: Deductions will begin after the gazettement of the regulations.			
3	Peter Kibe	Access to low cost housing for above 100k?	Response: The Regulations have been amended to increase the upper limit for persons qualifying for affordable housing to KES 149,999			
4	Peter Kibe	After how long will one qualify for housing?	No issue to be resolved in respect of the Regulations. Response: One will qualify after registering on the Affordable Housing portal as well as saving up to 2.5% of the value of the home.			
5	Peter Kibe	What other tax benefits do you get?	No issue to be resolved in respect of the Regulations. Response: Tax benefits due to Affordable Housing Program members include:			

			a) affordable housing relief; b) Stamp duty exemption for first time home owners.		
6	Peter Kibe	Question on taxation of refunds	No issue to be resolved in respect of the Regulations. Response: The taxation partly captures the returns on the contributions which will not be subjected to tax. For the principal contributions, a proposal has been made to amend the Income Tax Act to make the contributions for persons not qualifying for affordable housing to be tax deductible.		
7	Peter Kibe	Governance structure, Board Composition, and ToRs	No issue to be resolved in respect of the Regulations. Response: The Board responsible for the Fund is the NHC Board, the ToRs and Governance Structure for NHC will be captured in the NHC Guidelines for the Housing Fund.		
8	Peter Abande	Invite Peter Abande for future consultative forum	No issue to be resolved in respect of the Regulations.		
9	Peter Abande	Spousal contributions and allocation of homes	No issue to be resolved in respect of the Regulations. Response: This will be addressed in the FAQs and NHC guidelines to the Housing Fund.		
10	Internet Solutions	Note on punctuation in Section 5(2)	Addressed.		
11	Internet Solutions	Note on Section 13	No issue to be resolved in respect of the Regulations.		
12	Internet Solutions	Note on Section 16	No issue to be resolved in respect of the		

			Regulations.		
13	Internet Solutions	Note on Section 17	No issue to be resolved in respect of the Regulations.		
14	Internet Solutions	Note on Section 18	No issue to be resolved in respect of the Regulations.		
15	NCA	Functions and mandate of the Fund	No issue to be resolved in respect of the Regulations. Response: Will be explained in the Housing Fund Guidelines which will elaborate on the administrative issues.		
16	NCA	Clarify the relationship between the Corporation, Fund, and Scheme	No issue to be resolved in respect of the Regulations. Response: Partly addressed in sections 6 and 7 of the Housing Act. Will be addressed in the NHC Guidelines on the Housing Fund.		
17	NCA	Question on administrator, managing trustee, etc.	No issue to be resolved in respect of the Regulations. Response: Partly addressed in sections 6 and 7 of the Housing Act. Will be addressed in the NHC Guidelines on the Housing Fund.		
18	NCA	Representation of interest groups.	No issue to be resolved in respect of the Regulations. Response: Will be addressed in the NHC Guidelines on the Housing Fund.		
19	NCA	Consideration of salaries and remuneration guidelines on mortgages	No issue to be resolved in respect of the Regulations. Response: The Housing Fund will not be replacing the Civil Servants Housing		

			Scheme but will provide an alternative for accessing a home..		
20	NCA	Dependent children definition	Definition now amended to refer to nominees.		
21	NCA	On arrangements for those who are earning 100k and above	People earning up 149,999 can now access affordable housing. while those not qualifying for affordable housing can apply for a loan for purposes of purchasing a home.		
22	NCA	Define voluntary member	Definition of voluntary member now provided in the Regulations.		
23	NCA	Under Regulation 4, change employer to employee	Impetus is on both employer and employee to register on the Housing Portal.		
24	NCA	The Fund shall facilitate the registration of employer and employee	No issue to be resolved in respect of the Regulations. Response: The Housing Portal will allow for registration for both.		
25	NCA	The fine of K.Shs, 10,000 is not adequate	No issue to be resolved in respect of the Regulations. Response: The Regulations are bound by the penalties prescribed in the Housing Act. The Housing Act will be amended to make the sanctions more punitive.		
26	NCA	All contributors to contribute the sum of K.Shs. 100 per month for administrative purposes	No issue to be resolved in respect of the Regulations. Response: Please refer to Regulation 6 on the application of funds. The enabling legislation will be amended to facilitate the contribution from all members		
27.	NCA	The fund to provide annual statement	No issue to be resolved in respect of the		

		of accounts to contributors and beneficiaries	Regulations. Response: Administration matters will be expressly provided for in the NHC guidelines on the Housing Fund.		
28.	NCA	Clearly indicate when a member ceases to be a member of the Fund	No issue to be resolved in respect of the Regulations. Response: Issue addressed in the NHC Guidelines on the Housing Fund.		
29.	NCA	A member should be 18 years and above	No issue to be resolved in respect of the Regulations. Response: Agreed. Will be addressed in the FAQs.		
30.	NCA	Add mobile money statements	No issue to be resolved in respect of the Regulations. Response: Will be addressed in the FAQs.		
31.	NCA	Prepare schedule of amount of financing	No issue to be resolved in respect of the Regulations.		
32.	NCA	Incidental costs in applying for financing to include 10% to go towards- deposit/contribution, stamp duty, legal fees, valuation fees, rates, ground rent, mortgage protection insurance, insurance against fire and related perils, architectural fees, quantity survey fees, approval fees, engineering fees and loan appraisal fees. Some services should be provided by in house technical teams whereas	No issue to be resolved in respect of the Regulations. Response: Will be addressed in the FAQs. Response: Buyer/Borrower fees will be borne by the individual member. Stamp duty is currently zero-rated for first time home buyers. Development related fees such as QS, approvals, etc are to be borne by the private sector developer.		

		others can be zero rated eg appraisal fees			
33.	NCA	Application should provide for listing of next of kin and beneficiaries with supporting identification e.g. birth certificates	No issue to be resolved in respect of the Regulations. Response: The Housing Portal will call for this information.		
34.	NCA	Benevolence aspect should be introduced for support to bereaved families. Transfer of house or contributions to beneficiary(ies) can then be processed upon availing the relevant documents.	No issue to be resolved in respect of the Regulations. Response: This will be addressed in the FAQs and the NHC Guidelines on the Housing Fund.		
35.	NCA	The Fund should have the following products:- a) Loan of purchase; b) Loan for construction; Equity Release; Rental Scheme; Sale and rental of houses developed by the Fund	No issue to be resolved in respect of the Regulations. Response: This will be addressed in the NHC Guidelines on the Housing Fund.		
36.	NCA	Financing can be for urban and rural properties. Financing for ancestral properties should not be allowed.	No issue to be resolved in respect of the Regulations.		
37.	NCA	The regulations should address where the contributor had been earmarked for a lower income house graduates to a higher income range as well as disposal of houses. The regulation should address how it will ensure maximum contribution from the informal sector.	No issue to be resolved in respect of the Regulations. Response: This is an administrative issue to be addressed under the NHC Guidelines on the Housing Fund. No issue to be resolved in respect of the Regulations.		

38	Edward Gichina	What is the effective date of contributions	No issue to be resolved in respect of the Regulations. Response: Effective date of contributions is after the gazettment of the regulations.		
39.	Edward Gichina	Are all employees irrespective of income levels eligible to participate	No issue to be resolved in respect of the Regulations. Response: Yes. The benefits vary with those in the 0 - 149,999 income bracket qualifying for affordable housing while those above this level qualify for a loan to purchase a home.		
40.	Edward Gichina	Where do people register for the Housing Fund.	No issue to be resolved in respect of the Regulations. Response: This will be done through the Housing Portal. Please refer to FAQs		
41.	Edward Gichina	Who has oversight and accountability for the fund	No issue to be resolved in respect of the Regulations. Response: NHC will have oversight and will be accountable for the Fund.		
42.	Edward Gichina	How are employer and employee interests safeguarded	No issue to be resolved in respect of the Regulations. Response: The NHC Guidelines on the Housing Fund will provide information on accountability and transparency.		
43.	Edward Gichina	What is the governing law	No issue to be resolved in respect of the Regulations. Response: The Housing Act Cap 117 is the governing law.		

44.	Fund Managers Association	Clarity on whether NHC is the Housing Fund	No issue to be resolved in respect of the Regulations. Response: The Housing Fund is established as a Fund under the control of NHC as per section 6 of the Housing Act Cap 117.		
45.	Fund Managers Association	Role of KMRC and whether it is required when we have the Housing Fund.	No issue to be resolved in respect of the Regulations. Response: KMRC is a mortgage re-financier and provides liquidity to primary mortgage providers to increase access to and tenor of mortgages to people/registrants who are deemed eligible by partner financial institutions.		
46.	Fund Managers Association	Extend mortgage interest relief to cover any financing that may be made available by CBK, CMA, RBA, IRAS, SASRA towards mortgage/ home ownership	No issue to be resolved in respect of the Regulations.		
47.	Fund Managers Association	Extend the Home Ownership savings Plan to all licenced financial institutions in Kenya.	No issue to be resolved in respect of the Regulations. Response: This is covered under a different legislation.		
48.	Fund Managers Association	Clarity on whether employees are still required to contribute to the fund if they have a HOSP with another building society	No issue to be resolved in respect of the Regulations. Response: Yes, all employees are required to contribute to the Fund irrespective of whether they have other HOSPs		

49.	Fund Managers Association	Clarity on how Funds generated from the contributions and the HOSP will be managed	No issue to be resolved in respect of the Regulations. Response: Is an administrative issue to be addressed under the NHC Guidelines on the Housing Fund.		
50	Fund Managers Association	Clarity on whether the earnings are gross or net	No issue to be resolved in respect of the Regulations. Response: The Finance Act, 2018 provides that the contributions will be computed on the basic salary.		
51	Fund Managers Association	Clarity on the issue of uninterrupted contributions; what happens to those who fall out of employment completely without fulfilling the initial five year period; what happens to their contributions	No issue to be resolved in respect of the Regulations. Response: You wait for the 15 year period or retirement; whichever is earlier to get a refund of the contributions. Will be addressed in the FAQs.		
52	Fund Managers Association	Prepare detailed FAQs on how the program will work and circulate	No issue to be resolved in respect of the Regulations. Response: This is ongoing and the FAQs will be published as soon as they are complete.		
53	Fund Managers Association	Extend Section 5 (1) on Contract Service to factor people on short contracts i.e. 6-12 months	No issue to be resolved in respect of the Regulations. Response: People on short term contracts can contribute while under contract then proceed as a voluntary member after completing the contract period.		

54	Fund Managers Association	<p>Clarify on the minimum extent of voluntary contribution for salaried employees.</p> <p>Lower the charges of monies used on cost within the voluntary contribution and have a cap as a % of the assets</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The salaried employees are covered the compulsory 1.5% contribution. The salaried employees can make discretionary additional contributions depending on the value of the house they will to be allocated.</p> <p>No issue to be resolved in respect of the Regulations.</p> <p>Response: Fund expenses will be capped at 5% of the funds asset.</p>		
55	Fund Managers Association	Prescribe rational practical amounts of voluntary contributions for viability	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: Viability of voluntary contributions has been established to be a minimum of Kenya shillings 200 a month as per Regulation 6.</p>		
56	Fund Managers Association	Permit retirees of a particular age to make voluntary contributions	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: In respect of the Regulations.. All retirees will be eligible to make voluntary contributions.</p>		
57	Fund Managers Association	Create a penalty of at least KES 1m for misappropriation of funds to deter future offenders. Further since it is an economic crime. Provide for recovery of stolen assets plus interest at a prescribed rate of return	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: In respect of the Regulations.. The penalties can only be subjected to those provided in the Housing Act.</p>		
58	Fund Managers Association	Clarity on whether Formerly employed persons should contribute 1.5 % of the salary	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: In respect of the Regulations</p>		

			retirees, self employed and/or formerly employed can make voluntary contributions as per Regulation 6.		
59	Fund Managers Association	Provide an option of withdrawal for persons who have not been able to secure subsequent employment after a period of 36 months.	No issue to be resolved in respect of the Regulations. Response: Refer to Section 10		
60	Fund Managers Association	What is the defined explicit base levels in relation to the eligibility criteria	No issue to be resolved in respect of the Regulations. Response: Refer to Section 3(2)		
61	Fund Managers Association	Clarity on the construction charges and whether they will be exempt from VAT	No issue to be resolved in respect of the Regulations. Response: This is not under the Housing Fund's mandate. However, the Fund is working with the National Treasury to provide incentives that will lower the construction costs.		
62	Fund Managers Association	Clarity on whether the approvals given to developers will be free of charge. Will there be a single point of contact for all approvals	No issue to be resolved in respect of the Regulations. Response: This will be covered under the Development Framework Guidelines.		
63	Fund Managers Association	What process should the Developers follow in obtaining No Objection Certificates to obtain approvals?	No issue to be resolved in respect of the Regulations. Response: This will be covered under the Development Framework Guidelines.		
64	Fund Managers Association	Consideration on whether Developers fees payment period can be reduced to either 30 days after issuance of the Certificate of Completion or at least 50% payment should be made once construction is over	No issue to be resolved in respect of the Regulations. Response: Issue will be addressed in the Offtake Agreement.		

65	Fund Managers Association	Clarity on personal tax relief for those allocated houses under the affordable house scheme and why they are not eligible for subsequent relief	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The affordable housing relief recognises that before the employees are allocated a house they will still be paying rent in their current residences. For lower income employees the relief provides a cushion to prevent the erosion of their income. Effectively the government is subsidising the contribution until the employee gets a house. Once the employee is allocated a house, they are expected to channel what they would have paid as rent towards the contributions.</p>		
66	Economic and Social Rights Center (Hakijamii)	Issue on terms of the voluntary contributions: Whether they may discourage voluntary membership since employed people are not required to cater for operations	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: Section 6 amended</p>		
67	Economic and Social Rights Center (Hakijamii)	Issue on whether the Fund is discriminatory because unemployed people are not given the option to choose which category of housing they need and contribute accordingly	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: All contributors including those making voluntary contributions are eligible to select a category of housing based on their income bracket and contributions.</p>		
68	Economic and Social Rights Center (Hakijamii)	Clarity on whether there should be a provision included before enactment of the regulations exempting foreign nationals working in Kenya for a short period of time from registering as either an employer or employee	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The eligibility criteria under Regulations 4(4) and 15 Provides for Kenyan nationals only.</p>		
69	Economic and Social Rights Center (Hakijamii)	Provision of registration of employers and employees on online platforms such as E-Citizen	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: This will be done under the Housing Portal.</p>		

70	Economic and Social Rights Center (Hakijamii)	Clarity on what happens if a member moves from one category to another of (social housing, low cost housing and mortgage gap housing) when receiving salary increments	No issue to be resolved in respect of the Regulations. Response: This will be addressed under the NHC Guidelines on the Housing Fund.		
71	Economic and Social Rights Center (Hakijamii)	Clarity on whether housing acquired with additional costs such as management costs will be affordable for members who earn between 15,000 to 49,999	No issue to be resolved in respect of the Regulations. Response: This will be covered under the NHC Housing Fund Guidelines		
72	Economic and Social Rights Center (Hakijamii)	Whether a provision on access to contributions for members who interrupt their contribution can be included. This will cover members who may be employed on contract for a period shorter than 5 years.	No issue to be resolved in respect of the Regulations. Response: This will be addressed under the NHC Guidelines on the Housing Fund.		
73	Economic and Social Rights Center (Hakijamii)	What are the oversight measures put in place to ensure the Housing Fund budget is not misappropriated?	No issue to be resolved in respect of the Regulations. Response: The accountability and transparency measures will be addressed in the NHC Guidelines on the Housing Fund.		
74	Economic and Social Rights Center (Hakijamii)	Whether contributions by all employers and employees should be amended to be voluntary rather than mandatory. This is due to uncertainty of receiving a house and because others may be subject to other mortgages.	No issue to be resolved in respect of the Regulations. Response: Section 30 of the Employment Act make contributions compulsory for all employees. However, the employee have to apply for a house and for those who do not want the house are eligible for a refund of their contributions upon the earlier of retirement or at the end of 15 years from the start of the contributions.		
75	Economic and Social Rights Center (Hakijamii)	What is the procedure of land acquisition in informal settlements according to the Regulations?	No issue to be resolved in respect of the Regulations. Response: This does not fall under the		

			purview of the Housing Fund Regulations or the Housing Act.		
76	Economic and Social Rights Center (Hakijamii)	Whether the mandate of issuing loans should be left to bodies that are regulated and accredited by CBK to prevent money laundering	No issue to be resolved in respect of the Regulations. Response: Operations of the fund including issuance of loans is covered under the Housing Act		
77	Economic and Social Rights Center (Hakijamii)	Can the Fund borrow loan application best practices from Mshwari Facility at Safaricom or KCB Mpesa	No issue to be resolved in respect of the Regulations. Response: The Fund will adopt best practises from various sources.		
78	Economic and Social Rights Center (Hakijamii)	Issue on the defining social and affordable housing in monetary/ earning terms rather than rental and affordable to the lowest strata in the society.	Response: Affordability of the housing is measured and demonstrated by targeting a maximum monthly tenant purchase payment of 30% of monthly income.		
79	Economic and Social Rights Center (Hakijamii)	Can the contributions be converted to pensions payable in lump sum during the first year of retirement in the event a member of the Fund does not get a house?	No issue to be resolved in respect of the Regulations. Response: Yes this will be allowed.		
80	Kenya Tea Growers Association (KTGA)	Issue on contributions of employees for a period of five years to be addressed since most employees are seasonal or hired on a periodic basis hence they will not benefit from the Fund through either borrowing or withdrawing from the Fund	No issue to be resolved in respect of the Regulations. Response: In respect of the Regulations seasonal employees can make voluntary contributions as per Regulation 6.		
81	KTGA	Whether HF Contributions can be voluntary rather than mandatory as housing is not a priority among many.	No issue to be resolved in respect of the Regulations. Response: Section 30 of the Employment		

			Act makes it compulsory for all employees.		
82	KTGA	Whether the definition of Uninterrupted Contribution should be amended to take into account the possibility of interruption of payment due to loss of employment	Response: Yes, this will be taken in to consideration as per the NHC Guidelines on the Housing Fund		
83	KTGA	Clarity on the status of persons who contribute for less than five years and become unable to maintain their contributions	No issue to be resolved in respect of the Regulations. Response: Affordable housing now applies to everyone.		
84	KTGA	Whether the provision stating that access to contributions is for employees who are using the contributions as security for mortgage or housing development or for offsetting house loans is discriminatory against employees who are buying or building houses in cash.	No issue to be resolved in respect of the Regulations. Response: Affordable housing now applies to everyone.		
85	KTGA	Issue on the emerging increasing cost of labor on employers through introduction of individual benefit schemes which increases financial responsibilities on employees who already support the contribution of various statutory levies.	No issue to be resolved in respect of the Regulations.		
86	KTGA	Issue on compulsion of persons to contribute to the Fund yet they do not stand to benefit. Employers who do not fall within the bracket of Low Cost, Mortgage Gap or Social Housing shall not be beneficiaries of the Fund Issue on compelled pension contribution regardless of the existence of NSSF and other Provident Funds	No issue to be resolved in respect of the Regulations. Response: While there is a compulsory contribution, the employees benefit since they are either eligible for a house which is highly subsidised, they get a home loan at discounted rates or receive a return on their investments.		

			Under the fund there is no compulsory pension contribution. The employees who do not qualify for the house can on retirement or at the expiry of 15 years opt to receive a cash refund or transfer their funds to a pension scheme, with the pension scheme option conferring additional tax advantages.		
87	KTGA	What is the rationale given to compel employers to contribute to the Fund given that their contribution will not in any way attach benefit to the person employed.	No issue to be resolved in respect of the Regulations. Response: Under the Employment Act, employers have an obligation to ensure that their employees have reasonable accommodation. This has not worked in all instances and the affordable housing will help to attain this goal.		
88	KTGA	Contributions to the Fund will result in a salary/ wage increase of 1.5% to every employee without negotiations with unions or justified performance related reviews	No issue to be resolved in respect of the Regulations.		
89	KTGA	Whether the mandatory contribution is discriminatory because many contributors to the Fund stand not to benefit e.g. those earning above K.Shs. 100,000.00	No issue to be resolved in respect of the Regulations. Response: The upper limit has now been increased to KES. 149,999 which covers 99% of the employed population.		
90	KTGA	Issue on emergence of multiple benefits since some employers already have mortgages schemes with their workers. Employers who are providing free housing and allowances should not be compelled to contribute	No issue to be resolved in respect of the Regulations.		
91	KTGA	There is risk of mechanization of the tea industry because of the 1.5% increase of employees' basic salary to cater for contributions to the Housing Fund.	No issue to be resolved in respect of the Regulations.		

92	KTGA	Whether the Housing Fund can partner with other existing players in the housing sector to provide affordable housing without burdening the employed population with levy	No issue to be resolved in respect of the Regulations.		
93	KTGA	Whether the Housing Fund can create a better regulatory environment to manage the development and cost of housing e.g. using similar incentives as those proposed to be provided by Government to partners of Affordable Housing Program.	No issue to be resolved in respect of the Regulations.		
94	KTGA	Whether the mechanism for securing and ensuring effective administration of the Fund can be enhanced	No issue to be resolved in respect of the Regulations. Response: This will be addressed in the NHC Guidelines on the Housing Fund.		
95	KTGA	Pre-determining the return on investment before the Fund is operationalized because it is based on well-established known factors	No issue to be resolved in respect of the Regulations. Response: The return is to the Fund will be determined by NHC.		
96	KTGA	The rationale of compelling employers to make contributions since Regulation 13 (1) only talks about the Contributor accessing his or her contributions.	No issue to be resolved in respect of the Regulations in respect of the Regulations.		
97	KTGA	Whether there is deprivation of the right to property with reference to Regulation 18 which allows the beneficiary to refuse to give funds to the nominated beneficiary	Regulation 21 is amended for clarification.		
98	KTGA	Impracticality of Regulation 24 which envisions in the event of winding up, cash balances to the Fund would be remitted to the Exchequer and other assets of the Fund will go to the Ministry in charge of Housing to facilitate appropriate refunds to contributors. Whether this is discriminatory as there	No issue to be resolved in respect of the Regulations in respect of the Regulations.		

		will be difficulty in ascertaining the order of priority by which contributors will be refunded upon winding up.			
99	PWC	Clarity on uninterrupted Contribution; Proposed amendment which includes those from salaried employment and from voluntary contributions	Definition of uninterrupted contribution amended.		
100	PWC	Clarity on access to contributions; Proposed amendment housing clarifying two points: i) Whether "individual" contributions excludes the contributions by the employer; and ii) Whether those who do not qualify for affordable housing schemes can access their contributions under this provision.	Regulation 12 amended to clarify this issue.		
101	PWC	Clarity on whether the term "monthly income" should be amended to refer to monthly gross cash pay to avoid ambiguity on whether it refers to basic salary or gross salary and whether benefits are included.	Will define monthly income to refer to monthly gross pay.		
102	PWC	Clarity on what happens when contributors move from one category of affordable housing to another due to change in their income during the contribution period	No issue to be resolved in respect of the Regulations. Response: Issue addressed in the NHC Guidelines on the Housing Fund.		
103	PWC	Proposal to change paragraph 4 (2) of the Regulations on Contribution to the Fund by foreign employees. The paragraph should be amended to exempt all expatriate employees working in Kenya for less than 5 years from registration	Regulation 4(2) amended accordingly.		

104	PWC	Clarity on exemption for interns and part time employees or employees with multiple employers since there is risk that the contributions will be due from one employer at a time	No issue to be resolved in respect of the Regulations. Response: If you are eligible to benefit from the program (whether you are full or part time) you make the contributions		
105	PWC	Amendment of Paragraph 25 on misappropriation of Funds. Suggested amendment of the Regulations to read " <i>A person who misappropriates any funds or assets of the Housing Fund shall be liable to imprisonment for a term of five years or to a fine not exceeding KES 1,000,000</i> "	No issue to be resolved in respect of the Regulations. Response: The penalties can only be subjected to those provided in the Housing Act.		
106	PWC	Issue on self-employed voluntary contributors being compelled to pay administrative contributions yet the salaried contributors are not requested to do so. Proposed amendment: " <i>Every voluntary member shall contribute to the Housing Fund a minimum monthly contribution of two hundred shillings. This contribution shall accrue as a benefit to the member.</i> "	Regulation 6(1) (a) amended to clarify the position		
107	PWC	Clarity on the definition of social housing and low cost housing	Now amended under definitions		
108	PWC	Can a tax incentive be created for non-eligible contributors to encourage compliance and contribution? This will be through allowance of a tax relief for those not eligible for affordable housing schemes which would eliminate double taxation.	No issue to be resolved in respect of the Regulations. Response: The fund will make submissions to be included in the Finance Bill, 2019 for the refunds to be exempted from tax.		

109	PWC	Proposal that the amount of affordable relief is limited to the lower 15% of the basic pay, KES 108,000 per annum or the actual contribution, to ensure alignment with basic tax principles	No issue to be resolved in respect of the Regulations. Response: The fund will make submissions to be included in the Finance Bill, 2019 to provide clarity on the linkage of the relief to the contribution.		
110	PWC	Proposal for insertion of a Clause to cater for a waiver application mechanism where contributions are paid late due to compelling grounds.	No issue to be resolved in respect of the Regulations.		
111	Anonymous	Whether the definition of "Uninterrupted Contribution" be deleted and replaced with Paragraph 13	Definition of uninterrupted contribution is amended accordingly.		
112	Anonymous	Whether KRA can be made the collector of the housing fund and subsequently remit the funds to the Housing Fund reducing the administrative burden for the contributor and the Fund to set up systems for collection and enforcement Consequently delete Paragraph 5 (1), 5 (2), 5 (4) and 5 (5)	No issue to be resolved in respect of the Regulations. Response: Discussions with KRA are ongoing to appoint them as the collector of the funds.		
113	Anonymous	Whether the funds can be collected together with PAYE through iTax	No issue to be resolved in respect of the Regulations. Response: Discussions with KRA are ongoing to appoint them as the collector of the funds.		
114	Anonymous	Clarity on amendment of paragraph 6 (1) by deleting the word "registered" and replacing it with the words "required to contribute." To read as follows: An employer required to contribute under these Regulations shall.	No issue to be resolved in respect of the Regulations. Response: Each contributor will need to be registered under the Housing Portal.		

115	Anonymous	<p>Delete paragraph 6 (1) (c) and replace it with (c) retain such register or record for a period of five years.</p> <p>This will be consistent with all tax laws as per the tax procedures Act section 23.</p>	Regulation 5(1) (c) is amended to reflect the retention of the register for a period of 6 years.		
116	Anonymous	<p>Delete paragraph 13 (1) and replace it with</p> <p><i>Contributions by individual shall only be accessed for purposes of, paying for a house allocated under the affordable housing scheme, offsetting affordable housing loans, security for affordable housing mortgage or housing development and shall attract such annual return as may be determined by the Corporation.</i></p>	No issue to be resolved in respect of the Regulations.		
117	Anonymous	<p>Deletion of the word before and replacing with the words, "on or before" on paragraph 13 (4) This will allow for the contributions to be paid together with PAYE on or before the 9th of the following month.</p>	Regulation 12 is amended to clarify the position.		
119	Ernst & Young	<p>Proposal for a category of benefit that covers employees earning over K.Shs. 100,000/- per month as well as those who are self-employed.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The Affordable Housing Program has been extended to provide housing for people earning up to KShs. 149,999 and loans for those above this amount.</p>		
120	Ernst & Young	<p>Note on Section 2 on Uninterrupted Contribution.</p> <p>Proposal to have it mean "a contribution made for a cumulative period of 36 months for every 60 months. This is to cater for interrupted</p>	No issue to be resolved in respect of the Regulations.		

		employment periods.			
121	Ernst & Young	Note on Section 4 to amend "house" to "housing".	Amendment made accordingly.		
122	Ernst & Young	Note on Section 5 (4) to replace the word "employer" with "employee" for the Clause to read as intended.	Regulation 4 (4) is amended to state.... <i>any person</i>		
123	Ernst & Young	Can foreign employees contribute to the fund? Include subsection to Section 5 on illegibility of foreign employees.	Regulation 4(8) is amended accordingly.		
124	Ernst & Young	Note on Section 5 (6) to replace " <u>any person</u> " with " <u>any employer or employee...</u> " to avoid ambiguity.	Regulation 4 (6) is amended accordingly.		
125	Ernst & Young	Note on Section 8 (2) on mode of communicating receipt of the contribution.	No issue to be resolved in respect of the Regulations. Response: Notifications will be communicated on the portal.		
126	Ernst & Young	Note on Section 10 (2) to include employer contribution for member as part of details shown as individual's housing fund credit.	Regulation 9 (2) amended accordingly.		
127	Ernst & Young	Note on Section 12 (1) that it contradicts Section 13 (4) in respect of the due date.	Regulation 12(1) is amended accordingly.		
128	Ernst & Young	Note on Section 12 (1) on penalty of 5% per month stating that it is punitive. Proposal to amend to 5% and 1% per month for period it remains	No issue to be resolved in respect of the Regulations. Response: This has been provided in section 31A(5) of the Employment Act.		

		outstanding.			
129	Ernst & Young	Within what period are excess contributions refunded?	Regulation 11 amended.		
130	Ernst & Martin	Note on Regulation 4. Personal tax relief should be annual and not one off as provided.	No issue to be resolved in respect of the Regulations.		
131	Ernst & Martin	Note on Regulation 5. Employees who are already homeowners to be exempt from contributing to the Fund.	No issue to be resolved in respect of the Regulations. Response: Section 30 of the Employment Act provides for all employees. Those who already have houses will receive a refund of their contributions at the earlier of the date of retirement or end of 15 years from the start of contributions.		
132	Ernst & Martin	Note on Regulation 5 (2). Proposal to have proviso exempting employees who are homeowners from the Fund.	No issue to be resolved in respect of the Regulations. Response: Section 30 of the Employment Act provides for all employees.		
133	Ernst & Martin	The requirements for registration should form part of the Regulations and not form part of separate documentation. Proposal to have requirements for registration as part of the Regulations.	No issue to be resolved in respect of the Regulations. Response: The requirements for registration are mentioned in Regulations 4 and 15. However, the administrative processes will be provided for under the NHC Guidelines on the Housing Fund.		

134	Ernst & Martin	Consider entire Regulation 5 in light of the above proposal.	No issue to be resolved in respect of the Regulations. Response: Section 30 of the Employment Act provides for all employees.		
135	Ernst & Martin	Note on Regulation 8 on accountability and tracking of contributions. Amend to make it mandatory (read " shall " and not " may ") to contribute to the designated Housing Fund Account.	Regulation 7 amended accordingly.		
136	Ernst & Martin	Note on Section 12 (1) on penalty of 5% per month on default of payments stating that it is punitive. Proposal to adjust to 1%.	No issue to be resolved in respect of the Regulations.		
137	Ernst & Martin	Note on Regulation 12 (3). Within what period are excess contributions refunded? Proposal to have it at 30 days from the date of lodging the application for refund.	No issue to be resolved in respect of the Regulations.		
138	Ernst & Martin	Define the term Annual Return.	No issue to be resolved in respect of the Regulations. Response: The return determined by the Board of the corporation, such return shall accrue on an annual basis		
139	Ernst & Martin	Is there a benefit accruing to the contributors as would be if monies were deposited in a retirement benefit scheme/financial institution?	No issue to be resolved in respect of the Regulations.		
140	Ernst & Martin	Simplify Regulation 13(3) for clarity.	Regulation 12 in respect to access to contributions is amended to provide clarity.		

141	Ernst & Martin	How will the Fund determine the rate of return? Proposal to apply the existing market rate to avoid unfair practice and competition.	No issue to be resolved in respect of the Regulations. Response: The return determined by the Board of the corporation, such return shall accrue on an annual basis		
142	Ernst & Martin	Note on Regulation 17. Proposal that guidelines on direct lending by Fund to be included in the Regulations to ensure public participation and compliance with Constitutional and Legislative requirements on public participation.	No issue to be resolved in respect of the Regulations. Response: This issue shall be sufficiently addressed in the NHC Guidelines on the Housing fund.		
143	Ernst & Martin	Note on Regulation 18 (4) stating that it contradicts 18 (3).	No issue to be resolved in respect of the Regulations. Response: These provisions address two separate issues.		
144	Ernst & Martin	Note on Regulation 19 (4) proposing deletion as it contravenes provisions of 18 (3).	No issue to be resolved in respect of the Regulations. Response: Refer to the response on 143 above.		
145	Kenya Bankers Association	Definition of "affordable housing". Is there an exemption on employers who have mortgage schemes and whose employees may not need affordable housing?	No issue to be resolved in respect of the Regulations.		
146	Kenya Bankers Association	Ambiguity on the definition of "contributor" as both employers and employees contribute yet Regulation 13 implies that employees are contributors. Proposal to delete the definition and have the term "member" refer to employee contributions.	Regulation 13 is amended to provide more clarity. No issue to be resolved in respect of the Regulations. Response: The definition of contributor is		

			all encompassing.		
147	Kenya Bankers Association	Note on Clause 2. Should the same age criteria be used on Dependants?	Definition of son or daughter is amended by deleting the age restriction.		
148	Kenya Bankers Association	Definition of "Employer" "Employee" and "Contract of Service" to be provided as there are different definitions and various Statutes.	Definition of employer and employee now include.		
149	Kenya Bankers Association	Set out definition of "Fund" or "Housing Fund".	No issue to be resolved in respect of the Regulations. Response: This is provided under clause 2 of the Housing Act Cap 117.		
150	Kenya Bankers Association	The terms "Low Cost Housing" "Mortgage gap Housing" and "Social Housing" have been defined but not used in the Regulations. Proposal to delete the definitions.	No issue to be resolved in respect of the Regulations. Response: They are used to define the term an Affordable Housing Scheme.		
151	Kenya Bankers Association	Note on Clause 2 on "Uninterrupted Contribution" stating that it is unclear. Proposal to amend to "...contributions made to the Fund for a period of 5 years from the date a person becomes a member."	Regulation 2 on definition of uninterrupted contribution is amended.		
152	Kenya Bankers Association	Note on Clause 2. Typographical error in definition of "Dependent relative" vis-a-vis use of dependant relatives in the Regulations.	Amended accordingly.		
153	Kenya Bankers Association	Note on punctuation of Clause 3 (use of a full stop at the end of category (c) instead of the semi colon).	Amended accordingly.		

154	Kenya Bankers Association	Note on Clause 3 (2) to cater for earners of more than K.Shs. 100,000.00.	No issue to be resolved in respect of the Regulations.		
155	Kenya Bankers Association	Note on Clauses 4 & 5. NHC, and not NHDF, should be mandated with registration of employers and employees as the Fund is under the administration of the NHC.	No issue to be resolved in respect of the Regulations.		
156	Kenya Bankers Association	Note on conflict between Clauses 5(1) and 5(2). Who has registration obligations between the employer and the employee? Define the terms "Contributing Employer" and "Member".	Regulation 5(2) is amended accordingly to reflect employer. No issue to be resolved in respect of the Regulations. Response: The employer has the registration obligations. Employer, employee and member now defined.		
157	Kenya Bankers Association	Note on Clause 5 (4) (a). The word "scheme" is not defined. Should be reworded to "Fund". Proposal to restructure the Clause to remove the age reference set out in Clause 5 (4) (b) as the term "citizen" can be construed to include corporate entities.	Regulation (4)(4)(a) amended to read Affordable Housing Scheme. No issue to be resolved in respect of the Regulations. Response: The said Regulation is making reference to persons qualifying under the Affordable Housing Scheme who must be Kenyan citizens who have attained the age of 18.		
158	Kenya Bankers Association	Clause 8 is unclear as "Housing Fund Account" is not defined in the Regulations. Proposal to rephrase for clarity.	Definition of Housing Fund Credit now provided.		

159	Kenya Bankers Association	Have periodic issuance of Benefit Statements to the member electronically without them making a written request.	No issue to be resolved in respect of the Regulations. Response: This information can be accessed on the Housing Fund Portal		
160	Kenya Bankers Association	Note on Section 10 (2) to include employer contribution for member as part of details shown as individual's housing fund account.	Regulation 9 has been amended accordingly.		
161	Kenya Bankers Association	Under Regulation 10 (1) (a) include monies transferred to the Unclaimed Financial Assets Authority.	No issue to be resolved in respect of the Regulations. Response: This will be addressed under the NHC Guidelines on the Housing Fund.		
162	Kenya Bankers Association	Harmonize Clause 12 with Section 31A (5) of the Employment Act in respect of penalty for default in payment.	Amended accordingly.		
163	Kenya Bankers Association	Ensure terms defined in the Regulations have been defined to avoid confusion in interpretation (e.g. define "dependent children"). How is transfer of contributions to be undertaken?	Dependants have been amended under Regulation 2 to refer to nominees. No issue to be resolved in respect of the Regulations. Response: A detailed explanation will be provided in the NHC Guidelines on the Housing Fund.		
164	Kenya Bankers Association	Need to clarify Clause 15 (d) to avoid contradiction in respect of a person who qualifies for affordable housing.	Regulation 15 (c) amended to provide more clarity.		
165	Kenya Bankers Association	Note on Clause 16. What is the criterion for the grant of a loan?	No issue to be resolved in respect of the Regulations. Response: A detailed explanation will be provided in the NHC Guidelines on the Housing Fund.		

		Need for exemption of employees who already own homes from making further contributions to the Fund.	No issue to be resolved in respect of the Regulations. Response: Section 30 of the Employment Act makes it compulsory for all employees.		
166	Kenya Bankers Association	Clarify Clause 17 (e) which states: No borrower shall be eligible for more than one loan at a time from the Housing Fund within five (5) years.	No issue to be resolved in respect of the Regulations. Response: A borrower cannot borrow more than once in a 5 year span.		
167	Kenya Bankers Association	Set out the borrowing policy; conditions to be enforced; and Recourse the corporation will take for non-compliance under Clause 18 (2) (c)	No issue to be resolved in respect of the Regulations. Response: A detailed explanation will be provided in the NHC Guidelines on the Housing Fund.		
168	Kenya Bankers Association	Proposal to delete Clause 20 on Interest on Loans as it contradicts Section 7 (2) of the Housing Act.	No issue to be resolved in respect of the Regulations. Response: There is no contradiction.		
169	Kenya Bankers Association	Note on Clause 23 to amend the offences and penalties as those set out are lenient and not sufficiently deterrent of misappropriation of the Fund monies.	No issue to be resolved in respect of the Regulations. Response: The penalties can only be subjected to those provided in the Housing Act.		
170	Kenya Bankers Association	How will the maximum deduction of KES. 5,000/= be split between the employer and the employee?	No issue to be resolved in respect of the Regulations. Response: The contribution is split equally between the employer and employee.		

171	Kenya Private Sector Alliance (KEPSA) & Kenya Property Developers Association (KPDA)	Reading of Section 31 A of the Employment Act 2007 against the Regulations: Should both the Employer and Employee be compelled to contribute to the Fund even where there is a short term fixed employment contract/probationary contract?	No issue to be resolved in respect of the Regulations. Response: Section 30 of the Employment Act makes it compulsory for all employees.		
172	KEPSA & KPDA	Where the employee does not benefit due to the fact that the contributions have not been for 15 years, where do the accruals go to and who benefits?	No issue to be resolved in respect of the Regulations. Response: The accruals go to the employees benefit and he/she can access the contributions after 5 years of uninterrupted contributions, or after 15 years or retirement- whichever is earlier.		
173	KEPSA & KPDA	Proposal to avoid mischief by rewording the clause on employees who are not eligible for affordable housing to read " <u>upon attainment of retirement age</u> " and delete " <u>after retirement age</u> " as it may be interpreted to mean any time thereafter, which may frustrate the employee.	No issue to be resolved in respect of the Regulations. Response: This has been provided for in the 31 (2)(b) Employment Act.		
174	KEPSA & KPDA	What happens to accruals of employees who resign or have their contracts of employment terminated?	No issue to be resolved in respect of the Regulations Response: 15 years or retirement to access the funds whichever is sooner.		
175	KEPSA & KPDA	Define the term "dependent children" in The Regulations.	Reference to children now amended to reflect nominee.		
176	KEPSA & KPDA	Note on Section 11 (1) (b) How does an individual cease to be a member of the Housing Fund?	No issue to be resolved in respect of the Regulations. Response: A detailed explanation will be provided in the NHC Guidelines on the		

			Housing Fund.		
177	KEPSA & KPDA	<p>Note on Section 13 (1)</p> <p>Is there a refund for contributions that are interrupted for various reasons before the lapse of the requisite 5 years?</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: No there is no refund in this case until the stipulated period of 15 years is met or retirement- whichever is earlier.</p>		
178	KEPSA & KPDA	<p>General Overview:</p> <p>The Regulations seem to benefit civil servants, permanent employees or those with five years contracts of service.</p> <p>Should employers and employees in the private sector be compelled to contribute?</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: Section 30 of the Employment Act makes it compulsory for all employees.</p>		
179	KEPSA & KPDA	<p>Employees above the age of 50 should be excluded from the Fund as their contracts may expire before they make the uninterrupted contribution of five years.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: Section 30 of the Employment Act makes it compulsory for all employees.</p>		
180	KEPSA & KPDA	<p>Are civil servants benefitting twice from the Regulations and the Civil Servants (Housing Scheme Fund) Regulations 2004?</p>	<p>No issue to be resolved in respect of the Regulations.</p>		
181	Anjarwalla & Khanna (A&K)	<p>Note on Regulation 2.</p> <p>Proposal to extend the definition of the terms "Low Cost Housing" "Mortgage gap Housing" and "Social Housing" to define the Purchase Price of the houses.</p>	<p>Definition now amended</p> <p>Response: Affordability of the housing is measured and demonstrated by targeting a maximum monthly tenant purchase</p>		

			payment of 30% of monthly income.		
182	Anjarwalla & Khanna (A&K)	Note on Regulation 5 (1). Proposal to state benefits that accrue to someone earning more than K.Shs. 100,000/=. Consider adopting NHIF model.	Adopted Response: All contributors including those earning more than KES 150,000 are eligible for housing.		
183	Anjarwalla & Khanna (A&K)	Note on Regulation 5 (1). Proposal to cater for corporate employers and make a distinction between Kenyan and foreign employees	No issue to be resolved in respect of the Regulations. Response: The eligibility criteria under Regulations 4(4) and 15 Provides for Kenyan nationals only.		
184	Anjarwalla & Khanna (A&K)	Note on Regulation 5 (1) vis-a-vis Regulation 16. Should foreign employees make contributions seeing that the benefits of the Fund will not accrue to them.	No issue to be resolved in respect of the Regulations. Response: The eligibility criteria under Regulations 4(4) and 15 Provides for Kenyan nationals only.		
185	Anjarwalla & Khanna (A&K)	Note on Regulation 13. Should the employer's contribution be uninterrupted for 5 years too? Proposal to consider workers on short term contracts who would have gaps in their employment. Section would concern Developers who would have to wait for 5 years before they can sell any units.	No issue to be resolved in respect of the Regulations. Response: Workers on short term contracts will be required to make mandatory contributions which will be matched by employers under the duration of service. Response: Developers will be paid as per the terms of the Offtake Agreement.		

186	Anjarwalla & Khanna (A&K)	Note on Regulation 13. Proposal to clarify that contributions made by members to the Fund shall be exempt from income tax to avoid double taxation at repayment.	No issue to be resolved in respect of the Regulations. Response: Yes, contributions will be tax exempt.		
187	Anjarwalla & Khanna (A&K)	What is the criteria on allocation of houses? Proposal to state the purchase of units through the Tenant Purchase Scheme as set out in the Development Framework Guidelines, 2018.	No issue to be resolved in respect of the Regulations. Response: The allocation criteria will be reflected in the NHC Guidelines for the Housing Fund.		
188	Anjarwalla & Khanna (A&K)	Proposal to provide for the “off-take agreements”, as set out in Clause 7.3 of the Guidelines, in the Regulations	No issue to be resolved in respect of the Regulations. Response: The off-take agreements and other project related documents will be published and shared with developer partners.		
189	Anjarwalla & Khanna (A&K)	Note on Regulation 13 (2). Proposal to clarify that both the employer’s and employee’s contributions shall be refunded to the employee.	Covered under Regulation 9		
190	Anjarwalla & Khanna (A&K)	Note on Regulation 18 (4). Proposal to clearly set out the circumstances under which discretionary powers of the NHC to pay or vary the nominated beneficiary may be exercised.	No issue to be resolved in respect of the Regulations. Response: The nominated beneficiary will not be varied unless specified by the contributing member and will be reflected in the NHC Guidelines for the Housing Fund.		
191	Anjarwalla & Khanna (A&K)	Note on Regulation 19. Proposal to expand the benefits that accrue to a survivor of the contributor	No issue to be resolved in respect of the Regulations. Response: This will be reflected in the		

		upon their demise to include taking over of the loan repayments.	NHC Guidelines for the Housing Fund.		
192	Anjarwalla & Khanna (A&K)	Proposal to provide for group contributions. How would employers who already have housing for their employees benefit from the Fund?	No issue to be resolved in respect of the Regulations. Response: Contributions can only be on a single or joint (household) basis.		
193	Anjarwalla & Khanna (A&K)	Set out the governance of the Fund in the Regulations. How will the Fund be managed? What investments can the Fund venture into? What type of contracts and arrangements can the Fund enter into?	No issue to be resolved in respect of the Regulations. Response: This will be addressed in the NHC Guidelines on the Housing Fund.		
194	Anjarwalla & Khanna (A&K)	The amount of the fines provided for under Penalties is too low to act as a deterrent.	No issue to be resolved in respect of the Regulations. Response: The penalties can only be subjected to those provided in the Housing Act.		
195	Architectural Association of Kenya (AAK)	Feedback on the Development Framework Guidelines on Affordable Housing: Proposal to develop a model land use plan incorporating both social and physical infrastructure. Ensure counties have adequate Spatial Plans to guide implementation.	No issue to be resolved in respect of the Regulations. Response: This is captured in the Development Framework Guidelines.		

		Proposal to include an Action Plan to outline engagement with other Ministries in provision of social infrastructure such as schools, hospitals, places of worship, shopping facilities, parks and open spaces.			
196	AAK	<p>Proposal to develop infrastructure before the project commences or concurrently.</p> <p>Guidelines to be clear on provision of offsite infrastructure (sewerage and solid waste disposal and management, and electricity)</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The Government of Kenya will provide all off site infrastructure. This is captured in the Development Framework Guidelines.</p>		
197	AAK	<p>Mass/Public transit to be considered and developed before the project commences or concurrently.</p> <p>Proposal to map “ideal” locations for affordable housing along planned commuter rails.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The Government of Kenya will be address mass transit requirements. This is captured in the Development Framework Guidelines.</p>		
198	AAK	<p>Proposal to automate Development Control Systems in all 47 counties adopting the “One Stop Shop” system for all approvals and construction permits.</p> <p>Enage AAK on the digitisation of the construction industry.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: This is envisioned in the Development Framework Guidelines.</p>		
199	AAK	<p>Request to equitably consider allocation of value of projects to local consultants, contractors and manufacturers to promote local manufacturing and job creation.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: This is captured in the Development Framework Guidelines.</p>		

200	AAK	Proposal to establish a design criteria for the units had have a standardised “model” design through a government sponsored design competition in collaboration with AAK.	No issue to be resolved in respect of the Regulations. Response: AAK have been engaged on this opportunity.		
201	AAK	Proposal to review the Building Code to one which accommodates emerging issues and developments in the industry. Ensure laws regulating the Built Environment Professionals, such as the Architects and Quantity Surveyors, capture emerging issues and developments in the built environment.	No issue to be resolved in respect of the Regulations. Response: National Construction Authority have been engaged on this..		
202	AAK	Proposal to research on past government affordable housing projects e.g. Dandora Estate, including sociological analysis of any of the targeted groups.	No issue to be resolved in respect of the Regulations. Response: The State Department of Housing & Urban Development have drawn from lessons learnt on previous housing initiatives.		
203	AAK	Proposed inclusion of a mandatory requirement in the Regulations that the Developers submit financial projections and feasibility studies prior to execution of any agreement with SDHUD to ensure that they have considered all risks and financial requirements..	No issue to be resolved in respect of the Regulations. Response: Detailed financial feasibilities are required as part of the Special Procurement Process and are a prerequisite to the issuance of the off-take agreement.		
204	AAK	Consider other systems of funding home ownership in addition to mortgages, TPSs and the Housing Fund. Proposal to explore the SACCO system and partnership models with	No issue to be resolved in respect of the Regulations. Response:SACCOs and commercial banks have been engaged to provide affordable housing finance via the Kenya Mortgage Refinance Company,		

		them. Proposal to have financial institutions mandated with execution of the project as rated entities to boost investor and stakeholder confidence.			
205	AAK	Proposal to ensure the amount of insurance of mortgage repayments are large enough to prevent the collapse of our financial markets.	No issue to be resolved in respect of the Regulations. Response: Insurance companies are key stakeholders in the program and have been engaged.		
206	AAK	As housing is a devolved function, a specific delivery model should be developed for County governments with the option for County Governments to run Tenant Purchase Schemes (TPSS) as well as rental social housing schemes in partnership with the National Government/NHC.	No issue to be resolved in respect of the Regulations. Response: County governments have partnered with the Housing Fund in the development and offtake of affordable housing units.		
207	AAK	Proposal to fully implement outlined models for dissemination of information and receiving feedback for improved buy-in from stakeholders and improved perception of the project.	No issue to be resolved in respect of the Regulations. Response: Communication and feedback will be channelled via the housing portal.		
208	AAK	Proposal to have the programme embedded on Vision 2030 so as to assure its posterity.	No issue to be resolved in respect of the Regulations. Response: Vision 2030 Secretariat to be engaged.		
209	AAK	Feedback on Housing Fund Regulations: Note on Regulation 2. Proposal to consider creating a formula that will be applied to assign a specific housing scheme to a particular	No issue to be resolved in respect of the Regulations. Response: This will be covered under the NHC Housing Fund Guidelines and allocation criteria.		

		income population, as opposed to categorizing a specific income bracket in absolute figures against a specific housing scheme. This will ensure the relevance of housing scheme categorization against a particular income population in future.			
210	AAK	<p>Note that subject to the provisions of section 30A of the Income Tax Act, the Housing Fund Contribution should be tax exempt as is the case with NHIF and NSSF.</p> <p>Proposal that contributions paid out in cash after 15 years should not be included in the Contributor's taxable income for the year and not be subjected to tax.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The fund will make submissions to be included in the Finance Bill, 2019 for the refunds to be exempted from tax.</p>		
211	AAK	<p>Proposal to have tax rebates for employers who provide housing purchase schemes for employees.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The Housing Fund will supplement and work in conjunction with Employer schemes.</p>		
212	AAK	<p>Proposal to have the Regulations provide for the access to contributions by employer after 15 years.</p> <p>Ensure full funds (including employers' contribution) are accessed by employees as is the case with pension contributions.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: This is covered under the NHC Housing Fund Guidelines.</p>		
213	AAK	<p>Proposal to broaden access to affordable housing to provide for benefits from this funding model accruing to persons earning above Sh100,000.</p>	<p>Contributors earning above KES 100,000 have been incorporated in to the program.</p>		

214	AAK	Proposal to clarify on rate of return on investment for the contribution made by the employer and employee to ensure that the return is not below the prevailing market rates and/or inflation.	No issue to be resolved in respect of the Regulations. Response: The rate of return will be determined by the performance of the Housing Fund and as captured in the Housing Fund Guidelines.		
215	AAK	Proposal that offences and penalties should be more stringent to discourage any misappropriation of funds by the Fund's Employees and Management.	No issue to be resolved in respect of the Regulations. Response: The penalties can only be subjected to those provided in the Housing Act.		
216	AAK	Proposal to have strict guidelines on allocation of the Units and have stringent measures in place as regards any misappropriation of funds.	No issue to be resolved in respect of the Regulations. Response: Allocation guidelines will captured in the Housing Fund Guidelines and allocation criteria.		
217	AAK	Proposal to provide on the composition of the Fund's Management and vetting process and ensure that private sector is adequately represented.	No issue to be resolved in respect of the Regulations. Response: Composition of a private sector Advisory Board are captured in the Housing Fund Guideline..		
218	Grant Thornton	Note on Regulation 4 Personal Tax Relief- Proposal to add the statement, "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 purchase of	No issue to be resolved in respect of the Regulations. Response: Concern already addressed since members are only eligible for one house.		

		houses under the scheme shall not be eligible for relief.			
219	Grant Thornton	<p>Note on Regulation 5 Registration of employer and employee.</p> <p>The regulation requires all employers to register themselves and their employees as contributing members of the fund. However, the regulations do not provide timelines.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: Registration shall commence upon gazettelement of the Regulations.</p>		
220	Grant Thornton	<p>Note on Regulation 6 The Register</p> <p>Proposal for employers to maintain proper documentation of their employees for a period exceeding ten years as a matter of compliance with the law.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: This is captured in the NHC Housing Fund guidelines.</p>		
221	Grant Thornton	<p>Note on Regulation 7 Clarity on whether voluntary members will only be required to contribute KES 100 as opposed to the rate 1.5% applicable to employees</p>	<p>Correct. the voluntary contributions are based on the person's ability but subject to a minimum of KES 200 per month.</p>		
222	Grant Thornton	<p>Note on Regulation 11 Termination of a member's account</p> <p>Clarity on the circumstances required for termination of one's membership of the Housing Fund.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: Refer to Section 10 of the Housing Fund Regulations.</p>		
223	Grant Thornton	<p>Note on Regulation 12 Contributions made by a member or employer of the Fund in error.</p> <p>Clarity on specification of the duration for reclaiming the amount made in error.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: This will be captured in the Housing Fund Guidelines.</p>		

224	Grant Thornton	<p>Note on Regulation 13 Refund of contribution and accrued interest</p> <p>Clarity on whether contributions received in cash will be deemed a taxable income to the member receiving such payments as stated in the regulations.</p>	<p>This correct. However, there are proposals to amend the legislation to exempt the principal contributions from tax and only tax the return.</p>		
225	Grant Thornton	<p>Note on Regulation 20 Interest on Loans</p> <p>Proposal to lower the interest rate set at 7% for members wishing to access the funds bearing in mind that their income bracket as specified under the regulation ranges between KES 15,000 and ES 100,000 p.m.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The interest charged will be a factor of income bands with a 3% interest rate applicable for the lowest income band (social: KES 0 - 19,999/-).</p>		
226	Grant Thornton	<p>Note on Regulation 23 Offences and Penalties on misappropriation of Funds and assets of the Housing Fund.</p> <p>Proposal to increase the penalties for misappropriation by the officers</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The penalties can only be subjected to those provided in the Housing Act.</p>		
227	Grant Thornton	<p>Clarity on which class the voluntary members will fall (low cost, mortgage gap or social housing?) This is based on the regulation which states that voluntary members will only be required to contribute KES 100 as opposed to the rate of 1.5% applicable to employees.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: Voluntary members will self select their income levels.</p>		
228	KPDA	<p>Proposal for a specific legal framework to be enacted to implement the programme in order to address the unique needs and demands of the programme rather than having a</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The Housing Fund has been established the Housing Act and will</p>		

		regulation under the Housing Act	adhere to the requirements as stated in the Act		
229	KPDA	Proposal for the Housing Fund to be more inclusive for better delivery and create the necessary transparency and accountability in the administration of the Fund.	No issue to be resolved in respect of the Regulations. Response: Fund administration is covered in the Housing Fund Guidelines.		
230	KPDA	Clarity on which body shall be collecting the levy.	No issue to be resolved in respect of the Regulations. Response: This will be covered under the Housing Fund Administrative Guidelines.		
231	KPDA	Clarity on whether there is a conflict of interest given that the NHC is stated as the body governing the Fund and is also a developer and therefore a potential investor.	No issue to be resolved in respect of the Regulations. Response: The Housing Fund is established by the Housing Act and under the control of NHC. The Housing Funds mandate is in line with and not in conflict to that of NHC.		
232	KPDA	Tax Relief/ Exemption Proposal that the Housing Fund contribution should also be tax exempt subject to the provision of Section 30A of the Income Tax as is the case with NHIF and NSSF Proposal that the contribution paid out in cash after 15 years should not be included in the Contributor's taxable income for the year and should not be subjected to tax.	No issue to be resolved in respect of the Regulations. Response: The Fund will make submissions for inclusion in the Finance Bill 2019 a tax exemption for the income of the fund.		

233	KPDA	<p>Tax Rebates for Employers who provide Housing Purchase Schemes for Employees:</p> <p>Proposal for the widening of the delivery mode for Affordable Housing.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: Discussions are ongoing with different stakeholders on ways they can be involved in the delivery of affordable housing.</p>		
234	KPDA	<p>Access to Contributions</p> <p>Clarity on access to contributions by employers after 15 years. Does this ensure full funds (including employers contribution) are accessed by the employees as is the case with Pension contributions?</p> <p>Proposal to widen the bracket to include beneficiaries earning above K.Shs. 100,000. This includes adding in the Guidelines, measures which enable traditional mortgage lenders. e.g. bans to be attractive to persons earning above K. Shs. 100,000.00</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: All contributions will accrue to the employee and all contributors are eligible for the program.</p>		
235	KPDA	<p>Prescribed Return on Investment on Savings by Members</p> <p>Proposal for more elaboration on this regulation so as to ensure that the return on investment is not below the prevailing market rates and or inflation.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The rate of return will be determined by the performance of the Housing Fund and as captured in the Housing Fund Guidelines.</p>		
236	KPDA	<p>Offences and Penalties</p> <p>Proposal for more stringent offences and penalties to discourage any misappropriation of funds by the Fund's employees and management</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The penalties can only be subjected to those provided in the Housing Act.</p>		

	KPDA	Comments on the Development Framework Guidelines			
237	KPDA	<p>Commitment Fee: Proposal for an alternative such as a commitment fee to be issued to ensure financial ability of the developer.</p> <p>Clarity on whether the bid security of K.Shs. 4B and then the 10% commitment fee is required.</p> <p>Clarity on whether the commitment fee acts as a security fee and as such whether it can be recovered.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The commitment fee is a mandatory requirement and will be recovered by the project.</p>		
237	KPDA	<p>Joint Ventures</p> <p>Clarity on whether public land in use will be transferred to the Project Special Purpose Vehicle and as such whether it can be used as collateral for debt financing.</p> <p>Proposal that the principles of Joint Venture (JV) should be stated at a very early stage i.e. economic and general legal principles.</p> <p>Proposal that a list should be made clearly outlining what goes into determining the total costs. This list should include professional service costs, landscaping costs, provision of water, electricity etc. and should also specify at what point land will be transferred into the Special Purpose Vehicle to execute the programme.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: Refer to the Development Framework Guidelines.</p> <p>Response: Public land cannot be used as collateral for debt financing.</p>		

238	KPDA	<p>Statutory Approvals</p> <p>Clarity on whether the developers for affordable housing will not be charged any fees for approval at County Offices.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: Refer to the Development Framework Guidelines.</p> <p>Response: County approvals will be the responsibility of the Developer.</p>		
239	KPDA	<p>Infrastructure Development</p> <p>Clarity on what level of infrastructure the Government will provide: Roads,, street lights, sewer?</p> <p>Clarity on what stage the Government will do this and at what stage of development. Clarity on whether this has begun in any of the identified sites.</p> <p>Clarity on subsidizing on bulk infrastructure and how this will work.</p> <p>Clarity on development of offsite infrastructure.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: Refer to the Development Framework Guidelines.</p> <p>Response: The Government has committed to provide all off site infrastructure required.</p>		
240	KPDA	<p>Holistic Housing for Affordable Housing</p> <p>Proposal for the development of a model land use plan- incorporating both social and physical infrastructure to guide the provision of mass housing with minimum ratios of social infrastructure by providing for schools, hospitals, places of worship, shopping facilities, parks etc. in the framework that will then serve as a guide to investors.</p> <p>Proposal for inclusion of an action</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: This is captured in the Development Framework Guidelines.</p>		

		<p>plan in the framework outlining the engagement with other Ministries such as the Ministry of Education, Ministry of Internal Security and the Private sector</p> <p>Proposal to ensure Counties implementing the programmes have adequate Spatial Plans To guide the implementation.</p>			
241	KPDA	<p>Mass Transit and Non Motorized Transport Proposal for the development of mass transit infrastructure before projects commence or to be done so concurrently.</p> <p>Proposal that specific timelines to be attached to the delivery as part of the framework.</p> <p>Proposal for identification and mapping of “ideal” locations for affordable housing that are close to the planned commuter rail.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The Government of Kenya will be address mass transit requirements. This is captured in the Development Framework Guidelines.</p>		
242	KPDA	<p>Pre-Sales Clarity on who will collect the pre-sales and whether they can be used for development funding or partly used.</p> <p>Clarity on whether the collections will be sufficient to offtake all units for example, after construction and if not how is the offtake guaranteed?</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: There will be no pre-sales under the program as members will save in to the Housing Fund. Member contributions will guarantee offtake.</p>		
243	KPDA	<p>Approved Concept for Affordable Housing Clarity on whether the proposed</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: Refer to the Development</p>		

		<p>development split which is 70-30 in favor of development housing is mandatory.</p> <p>Clarity on if this is the position, what could be the recommended percentage.</p> <p>Clarity on the unit sizes, e.g. some documents indicate 3 bedroom of 78 sqms and others have indicated 60sqms.</p> <p>Clarity on the parking allocation</p> <p>Clarity on the level of finishing.</p> <p>Clarity on external works such as paving e.g. to what extent</p> <p>Clarity on the prices- is there a project cost and revenue model that has been used to arrive at the price of K. Shs. 0-6.3 M</p>	Framework Guidelines.		
244	KPDA	<p>Clear and Transparent Process in Housing Unit Allocations.</p> <p>Proposal for strict guidelines on allocation of housing units as well as stringent measures in place as regards misappropriation of funds.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: Allocation guidelines will be captured in the Housing Fund Guidelines and allocation criteria.</p>		
245	KPDA	<p>Funding models</p> <p>Proposal for consideration of other systems of funding home ownership in addition to mortgages, tenant purchase schemes and the Housing Fund.</p> <p>Proposal for exploration of the SACCO system and the partnership models with them.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: SACCOs and commercial banks have been engaged to provide affordable housing finance via the Kenya Mortgage Refinance Company,</p>		

		Proposal that the financial institutions mandated with the execution of the project should be rated entities so that they attract investors.			
246	KPDA	<p>The Building Code and Built Environment Legislation</p> <p>Proposal to ensure that the Building Code is enshrined in law which accommodates emerging issues, innovation and developments in the industry.</p> <p>Proposal to promote and fast track enhanced and effective regulation of professionals in the Built Environment.</p> <p>Proposal to ensure laws regulating Built Environment Professionals capture emerging issues and development in the built environment e.g. Cap 525 that regulates Architects and Quantity Surveyors.</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: The National Construction Authority has been engaged on this.</p>		
247	KPDA	<p>Role of the County Governments</p> <p>The County Government seems to have a minimum role in the execution of the programme yet housing is a devolved function.</p> <p>Proposal for the development of a specific delivery model for County Governments with the option for County Governments to run Tenant Purchase Schemes as well as rental social housing schemes in partnership with the National Government/</p>	<p>No issue to be resolved in respect of the Regulations.</p> <p>Response: County governments have partnered with the Housing Fund in the development and offtake of affordable housing units.</p>		

		National Housing Corporation.			
248	KPDA	Posterity and Sustainability of the Programme- Proposal that the programme should be embedded on Vision 2030 so as to assure its posterity; a guarantee that it is not a political tool and that its life will continue beyond 2022.	No issue to be resolved in respect of the Regulations. Response: Vision 2030 Secretariat is to be engaged.		