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Morison KSi
Independent member

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NATIONAL HOUSING FUND (Establishment) Act, 2018

Introduction

The news of the passage of the National Housing Fund (Establishment) Bill ("the proposed Act"), recently broke. The Bill is intended to largely replace the existing National Housing Fund Act Cap N45, Laws of the Federation of Nigeria 2004. The objective of the new law is to provide for additional sources of funding for effective financing of housing development in Nigeria. A quick review of the proposed law indicates that there are not many areas of differences with the existing laws, other than the attempt to jerk up the financial obligations of contributors.

Highlights of the Proposed Act

1. Introduction of Sustainable Development Levy of 2.5% on the ex-factory price of all locally produced or imported cement. FIRS appointed as agent for collecting this levy from the cement companies.
2. Employees' 2.5% contributions now to be based on "monthly income" as against basic salary in the existing law (no definition of monthly income is provided in the bill).
3. Self-employed persons are now required to contribute to the Fund at 2.5% of their monthly income.
4. Contribution of employees to the fund to now accrue interest at 2% per annum, as against the 4% payable under the current law.
5. Insurance companies, pension fund administrators, commercial and merchant banks are required to make a compulsory contribution of 10% of their profits before tax to the Fund. The contribution is to earn interest at 1% above the interest rate payable on current accounts.
6. Refunds can only be made after their 60^{th} birthday or 35^{th} anniversary in employment, provided there are no outstanding loans against the contributors.
7. Mortgage institution to be earned a spread of 2% over the interest charged on loans advanced through them to borrowers from the fund. The current law allows a spread of 4%.
8. A penalty regime of up to ₦100 million and N10 million for defaulting companies and individuals respectively, has been introduced.
9. Parties under the Act (contributors and the Bank) shall reserve the right to sue for recovery of contributions/penalties or refunds due to them, for up to 12 years from when the obligation first fell due.

Collection responsibilities and attendant penalties under the proposed Act are as summarized in the table below:

Contributors	Contributions	Collectors	Penalties
Employees earning minimum wage and above	2.5% of monthly income	Employers	Employer liable to up to ₦5,000,000.
Commercial and merchant banks	10% of profit before tax	Central Bank of Nigeria	License revocation
Insurance companies	10% of profit before tax	National Insurance Commission	License revocation
Pension fund administrators	10% of profit before tax	National Pension Commission	License revocation
Cement companies	2.5% of ex-factory price of every 50kg bag or its equivalent in bulk.	Federal Inland Revenue Service	₦100,000,000 for companies & ₦10,000,000 and/or 3 years imprisonment for individuals

Our Comments

With an estimated housing deficit of about 20million units needing N6 trillion naira to bridge, any intervention towards making affordable housing available to Nigerians is welcome. Laws should however be long-term solutions and not merely reactionary, neither should they portend bigger issues than those they seek to resolve. We therefore observe the following issues that could have been better represented in the bill presented to the President for assent.

1. As with similar laws in the recent past, this law tends to focus more on increasing revenue for the Fund and thus the government. It therefore appears as a veiled attempt to exert an additional tax from the productive economy. This is evident in the lack of new provisions to enhance access by contributors and guarantee security of the funds in the custody of the appointed managers.
2. The introduction of a new levy on cement which is an essential building material that represents a major cost of housing development is counter-productive to the objective of the proposed Act, of providing financing for housing development in Nigeria. This levy appears to defy logic, as it will only lead to higher costs of housing development and erodes part of the benefit to be derived from single-digit cost of funds via the NHF.
3. The proposed law does not define the meaning of "Monthly Income" on which 2.5% contribution of employees is to be based. This is an ambiguity that cannot be afforded by the economy and which the Federal Mortgage Bank may end up applying its discretion to. The current law requires contributions at 2.5% of basic salary (usually only a portion of the gross pay). It is pertinent to note that if this is interpreted to be 2.5% of Gross Salary, the negative impact on the monthly take-home pay of workers may be quite significant and this could generate another round of wage-increase agitation across industries.
4. The proposed Act provides for compulsory investment in the fund by banks, insurance companies and Pension Funds Administrators but does not make provisions for how these institutions can access fund from these investments. This makes their contributions more like an additional income tax rather than an investment. If this is the intention, Nigeria may have succeeded in raising the tax rate for these institutions to about 42%.
5. The earnings of the Pension Funds may also degenerate due to high tax liabilities thereby losing value for pensioners.

Conclusion

The proposed Act will bring certainty to the government's position on the implementation of NHF deductions by employers, in view of the current situation where compliance to the existing Act has been largely voluntary. The implementation of the proposed Act will create a new pool of funds which if properly managed, could boost the real estate financing sector. However, it is our view that the challenges of the housing sector in Nigeria are not limited to financing alone, and that unless all the relevant issues (including access to land) are addressed in a holistic manner, this intervention will only amount to another wasted effort and a drain on the meagre earnings of Nigerian workers.

Meanwhile, we find the hurried and rather quiet process of passing this law curious. A law that deals with such an important issue, as the provision of affordable housing to Nigerians, should have involved wide consultations and contributions by all stakeholders. We therefore hope that the President will consider all the inadequacies of the proposed Act and decline to give his assent until all the issues are appropriately addressed.

Albert Folorunsho
afolorunsho@pedabo.com

Killian Khanoba
kkhanoba@pedabo.com

Fidelis Chukwu
fchukwu@pedabo.com

Ogunsanwo Sanmi
sogunsanwo@pedabo.com

Lagos Office:
67, Norman Williams Street
South West, Ikoyi
Lagos, Nigeria
Tel: 01-2919041
0808 820 8747
info@pedabo.com
www.pedabo.com

Abuja Office:
4th Floor, Grand Square
Mohammed Buhari Road
Central Business District,
Abuja
Tel: 09-8707692