

NATIONAL HOUSING FUND (ESTABLISHMENT) ACT, 2018: ANALYSIS AND RECOMMENDATIONS FOR LEGISLATIVE REVIEW



In a letter dated March 19, 2019, addressed to the leadership of the National Assembly and read at Plenary on the floor of the Senate on Tuesday, April 2, 2019, President Muhammadu Buhari declined assent to eight Bills earlier passed by the federal parliament, one of which was the **National Housing Fund (Establishment) Act, 2018** (“**the new NHF Act**”). Predicating this decision on his powers under Section 58(4) of the *Constitution of the Federal Republic of Nigeria, 1999 (as amended)*, the President specifically attributed his decline to give assent to the new NHF Act to the various levies it imposes on Nigerians and business entities, which as have been argued by relevant industry stakeholders, would have negative impact on Nigerian workers and also be disruptive and punitive to industries and other sectors of the Nigerian economy, if allowed to take effect. The new NHF Act was passed by both Chambers of the National Assembly to repeal and replace the *National Housing Fund Act, 1992* (“**the 1992 Act**”)¹.

This article reviews the controversial provisions of the new NHF Act with respect to the statutory contributions required to be made to the *National Housing Fund* (“**the Fund**”) as well as the mandatory investment required to be made in the Fund by banks, insurance companies, pension funds and cement manufacturing companies/importers for the purpose of growing the Fund.

Analysis is also made of the negative socio-economic impacts which the forceful diversion of funds from the affected individuals and corporates, to the Fund, would likely have on the larger economy. From a

¹ The “National Housing Fund (Establishment) Bill, 2018” was passed in July 2018 by the House of Representatives and received concurrent passage by the Senate on February 18, 2019 as an Act of the National Assembly.

comparative analysis of the new NHF Act to the 1992 Act and an evaluation of the lackluster performance of the Fund since inception in 1992 to an overview of the moribund mortgage sector in Nigeria, it is submitted that the Fund needs to be grown and the mortgage sector needs to be deepened through an inclusive and incentivizing legal framework.

In order to successfully build Nigeria's mortgage market without causing harm to the other equally vital sectors of the economy, it is recommended, besides the other suggested policy reform initiatives, that the new NHF Act be returned to the National Assembly for a new round of legislative action geared towards addressing its identified contentious provisions.

HISTORICAL OBJECTIVE OF THE FUND

The Fund was established under the 1992 Act purposely to:

- facilitate mobilisation of fund for the provision of houses for Nigerians at affordable prices;
- ensure constant supply of loans to Nigerians for building, purchasing and improvement of residential houses;
- provide incentives for the capital market to invest in property development;
- encourage the development of specific programmes that would ensure effective financing of housing development, in particular low cost housing for low income workers;
- provide proper policy control over the allocation of resources and funds between the housing sector and other sectors of the Nigerian economy; and
- provide long-term loans to mortgage institutions for on-lending to contributors to the Fund.

Whilst the above aims and objectives of the Fund have been retained in the new NHF Act, the primary purpose of the re-enactment was to *“provide for additional sources of funding for effective financing of housing development in Nigeria”*².

THE FUND

The statutory sources of contributions to the Fund as well as investments in same by affected entities are as follows:

a) Contributions by Nigerians – both in the public and private sectors:

The new NHF Act provides that 2.5% of the monthly income of an employee earning the national minimum wage³ and above, either in the public or private sector, shall be contributed to the Fund⁴.

² See the “Explanatory Memorandum” to the new NHF Act

³ The current national minimum wage is Eighteen Thousand Naira (₦18,000) under the *National Minimum Wage (Amendment) Act, 2011*. This figure has been increased to Thirty Thousand Naira (₦30,000) in the *National Minimum Wage (Amendment) Bill, 2018* recently passed by the National Assembly and which currently awaits Presidential Assent to become operational.

⁴ Section 5(1) of the new NHF Act.

Same rate of contribution is prescribed for a self-employed person with equivalent monthly income⁵. Employers of labour are required to deduct, at source, the prescribed rate of contribution from the monthly salaries of qualifying employees⁶ and remit same to the Federal Mortgage Bank of Nigeria (the “FMB”) not later than one month from the date of deduction⁷. The prescribed contributions by self-employed persons are equally required to be remitted to the FMB personally by the affected persons, within the same time frame allowed for employers of labour⁸. The contributions to the Fund by the targeted Nigerians shall attract an interest of two percent (2%) per annum or any other interest rate as may be determined by the FMB⁹.



It should be noted that under the 1992 Act, self-employed persons are not covered and that the interest payable on contributions to the Fund by Nigerian employees is four percent (4%). This is significantly higher than the 2% rate provided in the new NHF Act. Also, the contribution of 2.5% of monthly income under the 1992 Act is applicable only to workers earning an income of Three Thousand Naira (₦3,000) and above while the new NHF Act is expected to cover workers earning the minimum wage or its equivalent and above.

b) Investment in the Fund by Banks (Commercial & Merchant):

Commercial and merchant banks are required, by the new NHF Act, to invest a minimum of ten percent (10%) of their profit-before-tax (“PBT”) in the Fund at an interest rate of one percent (1%) above the interest rate payable on current accounts by banks¹⁰. The 10% of PBT to be contributed by banks is required to be collected at the end of every year by the Central Bank of Nigeria (“CBN”) for onward remittance to the FMB, in the prescribed manner, for investment in the Fund¹¹. The new NHF Act prohibits failure of any bank to make available to the CBN at the end of a year the stipulated

⁵ Section 5(2), *ibid.*

⁶ Section 8(1), *ibid.*

⁷ Section 8(2), *ibid.*

⁸ Section 9, *ibid.*

⁹ Section 5(3), *ibid.*

¹⁰ Section 6(1), *ibid.*

¹¹ Sections 10(1) & (2), *ibid.*

contribution for investment in the Fund¹², and empowers the CBN to apply sanction on any erring bank which may include cancellation of the operating licence of the bank¹³.

We note that the proposed statutory contribution by banks is a clear departure from what is currently applicable. Under the 1992 Act, banks are only required to invest in the Fund 10% of their loans and advances at an interest rate of 1% above the interest rate payable on current accounts by banks. Also worthy of note is the fact that no sanction is contained in the 1992 Act in respect of failure of a bank to comply with the provisions on contribution to the Fund.

c) Investment in the Fund by Insurance Companies registered under the Insurance Act:

Similar to the prescribed investment by banks, every registered insurance company is required by the new NHF Act to invest a minimum of 10% of its PBT in the Fund, at an interest rate not exceeding 1% above the interest rate payable on current accounts by banks¹⁴. The stipulated investment by an insurance company shall not be affected by any provisions contained in the Insurance Act (Cap I17, LFN, 2004) or relating to investment of insurance companies in real property¹⁵. The new NHF Act gives the insurance industry regulator, National Insurance Commission (“NAICOM”), the duty to collect at the end of every year the 10% of PBT required to be contributed by insurance companies¹⁶, for onward remittance to the FMB, in the prescribed manner, for investment in the Fund¹⁷. Failure of any insurance company to make available to NAICOM at the end of a year, the stipulated contribution for investment in the Fund, is equally stated to be an offence¹⁸ for which sanction – including cancellation of the operating licence of the erring insurance company – may be applied by NAICOM through the Commissioner for Insurance¹⁹.

Worthy of note is the fact that under the 1992 Act, insurance companies are only required to invest a minimum of 20% of their non-life funds and 40% of their life funds in real property development (of which not less than 50% shall be paid into the Fund through the FMB) at an interest rate not exceeding 4%. Also, we note that, save for application of sanction on erring insurance companies, NAICOM plays no role under the 1992 Act with respect to the collection and onward transmission to FMB the contribution by insurance companies for investment in the Fund. In other words, under the extant regime, the FMB determines the contribution by insurance companies for the purposes of investment in the Fund and issue a Demand Notice to this effect, after a careful examination of the audited annual accounts of each insurance company.

¹² Section 10(3), *ibid*

¹³ Section 10(4), *ibid*

¹⁴ Section 6(2), *ibid*.

¹⁵ Section 6(3), *ibid*.

¹⁶ Section 11(1), *ibid*.

¹⁷ Section 11(2), *ibid*.

¹⁸ Section 11(3), *ibid*.

¹⁹ Section 11(4), *ibid*.



d) Investment in the Fund by Pension Fund Administrators:

Every registered Pension Fund Administrator (“PFA”) is mandated by the new NHF Act to invest a minimum of 10% of its PBT in the Fund, at an interest rate not exceeding 1% above the interest rate payable on current accounts by banks²⁰. The required investment by a PFA shall not be affected by any provision contained in the Pension Reform Act, 2014 relating to investment by PFAs in real estate development²¹. The new NHF Act gives to the National Pension Commission (“PenCom”) the duty to collect from PFAs at the end of every year²² for onward remittance to the FMB in the prescribed manner, the required contribution to be made for the purposes of investment in the Fund²³. Failure of any PFA to make available to PenCom for onward remittance to FMB the required contribution for investment in the Fund, as prescribed, is prohibited²⁴. The new NHF Act empowers PenCom to apply sanction on any erring PFA, which may include cancellation of the operating licence of the affected PFA²⁵.

Notably, pension funds were not included in the “Resources of the Fund” under the 1992 Act. The National Insurance Trust Fund, the old pension administrator in Nigeria and precursor to the PFAs, was not under any mandate to invest the assets under management in the Fund.

e) Financial contributions by the Federal Government for long-term housing loans:

As contained in the 1992 Act, the new NHF Act also provides that the Federal Government (“FG”) may make any grant of money to the Fund as it may determine or deem necessary²⁶. Specifically, the FG is required to make adequate financial contributions to the Fund for the purpose of granting long term loans and advances for housing development in Nigeria²⁷.

²⁰ Section 6(4), *ibid.*

²¹ Section 6(5), *ibid.*

²² Section 12(1), *ibid.*

²³ Section 12(2), *ibid.*

²⁴ Section 12(3), *ibid.*

²⁵ Section 12(4), *ibid.*

²⁶ Section 5(4) & Section 7(2), *ibid.*

²⁷ Section 7(1), *ibid.*



f) Sustainable Development Levy on locally produced or imported cement:

The new NHF Act imposes a fresh tax called *Sustainable Development Levy* (the “**Levy**”) on the production and importation of cement in Nigeria²⁸. The Levy is to be paid and credited into the Fund²⁹ and is calculated at the rate of 2.5% ex-factory price before transportation cost for each bag of 50kg or its equivalent in bulk³⁰. The duty to assess and collect the Levy is conferred on the Federal Inland Revenue Service (“**FIRS**”)³¹ under the new NHF Act. The FIRS is required to remit the Levy collected to the FMB in the prescribed form³².

After proper assessment of the Levy due to be paid by a manufacturing company or importer in a year, the FIRS is to issue a “Notice of the Assessment” to the affected manufacturer/importer following which the Levy shall become payable within sixty (60) days³³. Where the Levy is not paid within the specified period, the FIRS is required to serve on the affected manufacturing company or importer a “Demand Notice” for the unpaid Levy plus a sum which is equal to 2% of the Levy as penalty³⁴. Any manufacturing company or importer that fails to pay the Levy imposed within two (2) months of the service of the Demand Notice commits an offence and liable on conviction, in the Federal High Court, to a fine not less than One Hundred Million Naira (₦100m) as stipulated in the new NHF Act³⁵. In addition to this, a Chief Executive Officer (“**CEO**”), director or officer purporting to act in the capacity of the company/importer shall be liable, upon prosecution and conviction, to a fine of Ten Million Naira (₦10m) or imprisonment for a term of three years or both³⁶; unless it is proven that the act or omission

²⁸ Section 3(f) & Section 4(1), *ibid.*

²⁹ Section 4(1), *ibid.*

³⁰ *Ibid.*

³¹ Section 13(1), *ibid.*

³² Section 13(2), *ibid.*

³³ Section 13(3), *ibid.*

³⁴ Section 13(4), *ibid.*

³⁵ Section 13(5), *ibid.*

³⁶ Section 13(6), *ibid.*

constituting the offence took place without the knowledge, consent or connivance of the CEO, director or officer³⁷.

This is a new development, as no tax was imposed on cement manufacturing companies and importers under the 1992 Act. The Levy is thus part of the additional sources of funding created by the new NHF Act to boost effective financing of housing development in Nigeria.

COMMENTS



Generally, the thrust of the new NHF Act is well understood, given the fact that the housing sector requires adequate funding to support a robust mortgage system for the provision of affordable homes for Nigerians. According to data released by the Nigerian Bureau of Statistics, Nigeria's housing deficit stood at 17 million units as at 2012. Today, the housing gap continues to widen rapidly with Nigeria's burgeoning population (currently estimated at 200 million people) coupled with low access to housing finance, particularly among low and middle income earners and operators in the informal sector of the economy. Recent reports underpin the country's low rate of access to affordable homes. Nigeria reportedly has only 25% rate of home ownership compared to 84% in Indonesia, 73% in Kenya and 56% in South Africa³⁸. If the current rate of population growth is sustained, it is estimated that about US\$363 billion would be needed to curb Nigeria's current housing deficit of about 20 million units³⁹. Therefore, the urgent need for policies and regulations geared at deepening the mortgage market is quite understood. Mortgage finance in Nigeria currently stands at 0.58% of Gross Domestic Product

³⁷ Section 13(5), *ibid*.

³⁸ See Nigeria Chapter in the "Africa Housing Finance Yearbook 2018", Centre for Affordable Housing Finance in Africa (CAHF), 30th January 2019, pages 213 - 216 – http://housingfinanceafrica.org/app/uploads/2018_CAHF_YEARBOOK_final-compressed.pdf

³⁹ *Ibid*.

(GDP)⁴⁰. This is abysmally low compared to 80% in the United Kingdom, 77% in the United States of America and 31% in South Africa⁴¹.

In spite of the above and the good intention reflected in the main objective of the new NHF Act, the legislation as passed by the National Assembly contains provisions which would make its implementation difficult and which, apparently, have potentially counterproductive effects on the housing sector, financial market and the Nigerian economy at large.

Firstly, the 2.5% contribution mandated for qualified individuals amounts to a regressive tax on the people's income. For instance, a worker placed on the soon to be implemented monthly minimum wage of ₦30,000 is required to contribute the sum of ₦750 monthly to the Fund while a middle class worker earning ₦300,000 monthly is required to contribute a sum of ₦7,500. Economists and tax analysts have argued that this is not progressive, as it imposes more tax on low income earners than the average and high income earners; when the contributions are expressed as a percentage of the income tax (PAYE) of the respective workers.

Secondly, the imposition on commercial and merchant banks, insurance companies and PFAs to invest 10% of their PBT in the Fund, will further reduce the amount of credit available from banks to other sectors of the economy; such as loans to Micro, Small and Medium Enterprises (MSMEs) as well as cut the returns on investment to shareholders of banks, insurance companies and PFAs. By forcefully diverting investible funds from more profitable ventures, such as capital market instruments; trade finance; project finance and consumer lending etc. at a meager interest rate of 1% above the interest rate payable on current accounts by banks, the new NHF Act, if operational, will shrink projected revenues and profit margin of banks, insurance companies and PFAs as well as trigger further liquidity crisis in the financial market. This is not desirable at this time when banks are struggling to return to stability and profitability and insurance companies barely struggling to stay afloat amidst economic recession and stagnancy. Also, given Nigeria's past bitter experiences with provident funds and the sensitivity and fragility of pension fund assets vis-à-vis the poor performance of the Fund since its establishment in 1992; caution is advised in the way and manner the growing pension funds in the country is invested.

Thirdly, there are no provisions as to the duration of the investment which banks, insurance companies and PFAs are to make in the Fund. The new NHF Act is silent on whether the capital invested by the affected financial institutions can be withdrawn after a particular period and the mode of such withdrawal. It is therefore not clear if a bank, insurance company or PFA facing imminent liquidity challenge could resort to making withdrawal out of its stake in the Fund.

Fourthly, the Levy of 2.5% ex-factory price before transportation cost for each bag of 50kg or its equivalent in bulk, will eventually be passed on to consumers by way of increase in price of a bag of

⁴⁰ Ibid.

⁴¹ Ibid.

cement. A clear unintended consequence of this is that the cost of building a house will further go up, thereby defeating the original purpose of making affordable housing available to Nigerians through the Fund. It therefore appears that the Levy, as proposed in the new NHF Act, will be counterproductive on implementation.

Fifthly, the penalty regime in the new NHF Act is not commensurate with the offences created therein. The amount of fines prescribed and the terms of imprisonment stipulated for persons (individuals and corporates) found guilty of contravening any of the provisions in the new NHF Act are too heavy and stringent and could cripple the affected sectors. Rather than boosting the housing sector and the economy, the excessive and disproportionate penalties would act as disincentive to investment and further stifle the ease of doing business in Nigeria.

In conclusion, whilst we support the need to deepen the mortgage market in Nigeria, the Fund should not be grown at the expense of the other vital sectors of the economy as analyzed. In our opinion, the first step to take in boosting the Fund should be a review of its operation since inception to determine its strength, weakness, opportunity and threat (SWOT analysis) with a view to charting the right path and policy direction for the growth and efficient application of the Fund. To avoid the likely negative multiplier effects on the economy, it is strongly recommended that the new NHF Act be subjected to legislative overhaul through wide consultations with relevant stakeholders including the Bankers Committee, Nigerian Insurers Association (NIA), Pension Fund Operators Association of Nigeria (PenOp), Manufacturers Association of Nigeria (MAN), Nigeria Employers' Consultative Association (NECA), Nigerian Economic Summit Group (NESG), labour unions, civil society groups and the Organized Private Sector. The recommended review should be done and the concerns raised addressed after which the President's assent can again be sought to the new NHF Act.

The Grey Matter Concept is an initiative of the law firm, Banwo & Ighodalo

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