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EXAMINING THE FLAWS OF THE NATIONAL HOUSING FUND (ESTABLISHMENT) BILL 2018

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By a letter to the Senate President dated 28th March 2019, the President of the Federal Republic of Nigeria declined to assent to the National Housing Fund (Establishment) Bill 2018 ("the Bill") which had been earlier passed by the National Assembly. The letter stated that the President declined to assent to the Bill for the following reasons:

1. The various levies and obligations imposed by Sections 4, 5, and 6 of the Bill including:
   i. 2.5% of the ex-factory price before transportation cost of each manufactured or imported 50kg bag of cement or equivalent in bulk;
   ii. 2.5% monthly deduction from workers' salaries;
   iii. The compulsory investment requirement imposed on commercial banks, merchant banks, insurance and pension fund administrators of a minimum of 10% of their profit before tax into the National Housing Fund will be disruptive to a number of industries and sectors of the Nigerian economy including cement, manufacturing, banking, insurance, pensions and may impact adversely the average Nigerian worker.

2. The provisions of Section 6(5) of the Bill in relation to the Pension Reform Act and real estate investment thereunder may undermine the administration of the pension industry by the

BACKGROUND

The National Housing Fund (NHF) Act No. 3 of 1992 Chapter N45 Laws of Federation of Nigeria (LFN) 2004] ("the Act") came into effect on 31st January 1992, with the aim of:

a. Facilitating the mobilisation of the Fund for the provision of affordable housing for Nigerians; and

b. Ensuring the constant disbursement of loans to Nigerians for the purpose of building, purchasing, and improvement of residential houses.

The Act establishes the National Housing Fund[1] ("the Fund") into which all contributions and other monies prescribed by the Fund shall be paid[2]. These include:

a. Contributions by Nigerians both in the public and private sector;

b. Investment in the Fund by commercial and merchant banks;

c. Investment in the Fund by insurance companies registered under the Insurance Act; and

d. Financial contributions by the Federal Government for long-term housing loans.

Under the Act, a Nigerian worker earning an income of N3,000 and above per annum in both the public and private sector is required to contribute 2.5% of his/her monthly basic salary to the Fund.[3]

[1] Section 1
[2] Section 3
[3] Section 4

Commercial and Merchant Banks are also mandated to invest 10% of their loans and advances in the Fund at an interest rate of 1% above the interest rate payable on current accounts by the Banks.[4]
Also, all registered insurance companies are required to invest a minimum of 20% of their non-life funds and 40% of their life funds in real property development and this is to be paid into the Fund through the Federal Mortgage Bank ("the Bank") at an interest rate not exceeding 4%.[5]

There is no mandatory percentage of revenue specified for the Federal Government.
The proceeds from the Fund are used to finance the housing sector through wholesale mortgage lending to primary mortgage institutions by the Bank.[6]

THE PROPOSED NHF ACT

On 18th February 2019, the National Assembly passed the Bill. The Bill aims to provide additional sources of funding for the financing of housing development in Nigeria. To this end, two additional sources of the contributions to the Fund have been provided. They are:

a. Investment in the Fund by Pension Fund Administrators ("PFAs"); and

b. Sustainable Development Levy on locally produced or imported cement.

Key provisions in the Bill include:

Key provisions in the Bill include:

1. Sustainable Development Levy: The Bill introduces a levy known as the Sustainable Development Levy ("SDL") to be paid on locally produced and imported cement. The rate at which the levy is to be paid is 2.5% of the ex-factory price before transportation cost for each cement bag of 50kg or its equivalent in bulk. Ex-factory price is the price which the manufacturer charges for the products as they leave the production line. The price does not include taxes, surcharges or shipping and handling fees.
The President may also, by an Executive Order amend, or substitute the goods and services to which SDL may apply and approve rates for SDL as he deems fit.
SDL is to be assessed and collected by the Federal Inland Revenue Service ("the FIRS") and is payable within 60 days of issuance of an assessment notice by FIRS on the importer or manufacturer.

2. Rate of Contribution for Employees and Self-Employed Persons: The Bill requires employees working in the public and private sectors as well as self-employed persons who earn the national minimum wage and above to contribute 2.5% of their monthly income (comprising basic salary and other allowances) to the Fund.

[4] Section 5(1)
[5] Section 5(2)
[6] Section 7(2)(a)

This is different from the rate specified under the Act which is 2.5% of the monthly basic salary.

3. Pension Fund Administrators:

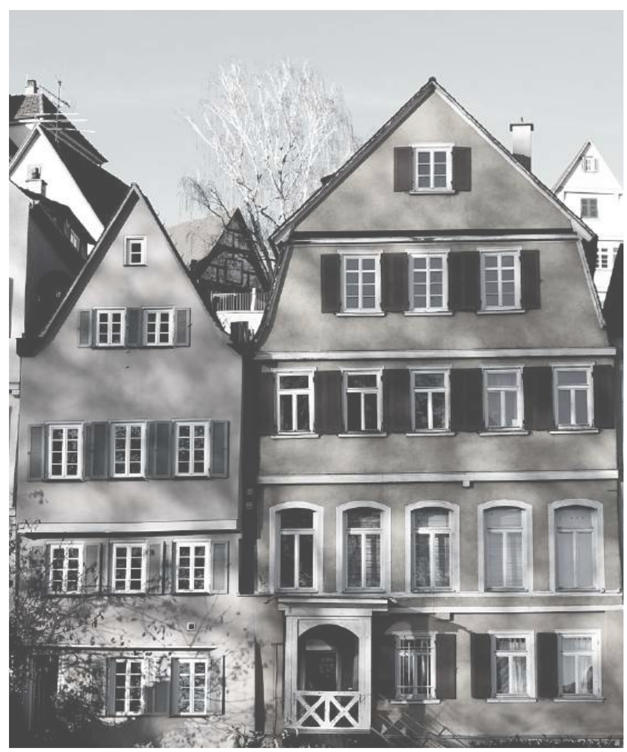
The Bill includes PFAs in the list of organisations that are required to invest in the Fund. PFAs are required to invest at least 10% of their profit before tax in the Fund at an interest rate of 1% above the prevailing interest on current bank accounts.

4. Increased contribution for Banks and Insurance Companies:

Banks and insurance companies are required to invest at least 10% of their profit before tax in the Fund at an interest rate of 1% above the prevailing interest on current bank accounts instead of 10% of their loans and advances at an interest rate of 1% above the interest rate payable on current accounts by banks.

5. Contributions to accrue reduced interest: The contributions made to the Fund by employees in the public and private sectors and self-employed persons will accrue interest at the rate of 2% per annum, in place of the 4% specified under the Act.

6. Increase in penalties: The Bill proposes increased penalties for non-compliance with the provisions of the Bill. For instance, where an employer who is a corporate body fails to deduct or deducts and fails to remit any sum from the monthly salaries of its employees for the purpose of the Fund, such employer commits an offence and is liable on conviction to a fine of N5,000,000 (Five Million Naira) instead of a fine of N50,000 (Fifty Thousand Naira) specified under the Act. The table below summarises the penalties for failure to comply with the requirements of the Bill:



S/N	Offence	Affected Persons	Penalty
1	Failure to pay SDL within 60 days of receipt of assessment notice from FIRS	Manufacturers and importers of cement	A penalty of 2% of the unpaid sum, plus the following fines: **Company:** Fine of ₦100,000,000 and prosecution of the Chief Executive Officer ("CEO") or director. **Individual:** Fine of ₦10,000,00 or imprisonment for three years; or both.
2	Failure to deduct or deducting and failure to remit to the Fund	Companies and individuals	**Company:** Fine of ₦5,000,000. **Self-employed:** Fine of ₦100,000 or imprisonment for one year, or both. **Employee authorised to deduct and remit to the Fund:** Fine of ₦50,000 or imprisonment for five years; or both.
3	Failure to pay 10% of profits before tax into the Fund	Commercial/merchant banks, Insurance companies, and Pension Fund Administrators.	Cancellation/withdrawal of licence by the relevant regulatory body.
4	Misrepresentation and presentation of false documents/information	Individuals	Fine of ₦60,000 or imprisonment for three years, or both.
5	Failure to produce documents for inspection	Companies and individuals	**Company:** Fine of ₦1,000,000. **Individual:** Fine of ₦50,000 or imprisonment for one year, or both.
6	Preventing or obstructing of deduction or remittance to the Fund	Companies and individuals	Fine of ₦50,000 or imprisonment for one year, or both.
7	Failure to comply with the provisions of the Bill	Companies and individuals	**Company:** Fine of ₦100,000,000 and prosecution of CEO or director. **Individual:** ₦10,000,000 or imprisonment for three years, or both.

NATIONAL HOUSING FUND (ESTABLISHMENT) BILL 2018

TAKEAWAY AND CONCLUSION

The Bill raises a number of issues which are discussed below:

i. Less profits for shareholders:

The Bill requires that commercial/merchant banks, insurance companies, and PFAs invest 10% of their gross profits in the Fund. This means that the expenses of these companies will increase thus leading to a lower net profit and in turn, lead to less returns for shareholders.

ii. Potential increase in the cost of cement and in turn, housing:

The SDL which is imposed on locally produced and imported cement creates an extra level of taxation on cement. For imported cements, SDL would be in addition to the import duties the Nigeria Customs Service already collects on imported goods in Nigeria. It is expected that the manufacturers and importers will merely pass this extra cost on to the consumer thus increasing the price of cement and in turn, the cost of building houses.

iii. Reduction in spending power:

The Bill requires that 2.5% of monthly income be contributed to the Fund. Monthly income comprises basic salary and other allowances in the employment contract like housing, transport, meal and utility allowances. This would result in a higher total deduction than the 2.5% of monthly basic salary specified in the existing Act. This requirement of increased contribution to the Fund will lead to a reduction in the disposable income available to employees and self-employed persons and will ultimately reduce the spending power of the contributors.

iv. Tougher penalties for non-compliance:

The penalty regime proposed to be issued by the Bill appears stiff. An example is the proposed fine of N100,000,000 (One Hundred Million Naira) and the prosecution of the CEO or Director of a company that fails to pay the SDL and the fine of N10,000,000 (Ten Million Naira Only) or imprisonment for three years or both for an individual that fails to pay the SDL. This is in addition to the increased overall cost of doing business and increased cost of compliance with the Bill.

TAKEAWAY AND CONCLUSION (CONT'D)

v. Interest on contributions: The Bill provides that interest on contributions shall be at the rate of 2% per annum. This is a far cry from other investment options that give investors at least 10% return on investment which they can either withdraw, or reinvest. The Bill makes no mention of how the interest on contributions will be treated and whether they will be withdrawn in cash, or reinvested into the Fund.

In conclusion, the Bill seeks to increase the contributions from the sources already listed in the Act and also introduce new sources of funding for the Fund. While the idea behind the Bill is commendable, the main objective of the Act should be creating an enabling environment for the provision of affordable housing and not only making more money available for the provision of affordable housing. In this regard, the provisions of the Bill seem counter-productive.

Though the intention of the Bill is to provide more money for the provision of affordable housing, the levies which it proposed will only serve to increase the cost of building houses and reduce the spending power of employees for whom these houses are meant. Thus, the intention of the Bill is defeated as cost of housing will increase and the employees for whom these houses are meant, will not be able to afford them as their spending power is reduced thus exacerbating Nigeria's already deplorable housing problem.

The President's decision to withhold assent to the Bill on the basis that will be disruptive to a industries and sectors of the Nigerian economy including cement, manufacturing, banking, insurance, pensions and may impact adversely the average Nigerian worker is thus a commendable one.

The Act was enacted in 1992 with the aim of mobilising funds that would be applied towards provision of affordable housing for Nigerians. However, that is not the case as the housing problem in Nigeria continues to worsen. As at 2012, The National Bureau of Statistics estimated that Nigeria has a housing deficit of 17,000,000 houses and requires the construction of 700,000 houses annually to bridge the gap.

TAKEAWAY AND CONCLUSION (CONT'D)

This is in stark contrast to the less than 100,000 houses which are constructed annually. The Act has therefore not served its purpose and this will not be corrected by simply throwing more money at the problem.

The focus of the National Assembly should thus be geared towards enacting laws that create an enabling environment for the provision of affordable housing. To achieve this, the government must understand that the private sector is a key stakeholder as the government alone cannot build affordable housing for every Nigerian. To this end, the government has to seriously consider entering into Public-Private Partnerships for the development and provision of affordable housing on terms that are not materially disadvantageous than those being directly provided by the government.

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