

LAWS OF KENYA



THE AFFORDABLE HOUSING ACT

CHAPTER 117A

Revised Edition 2024

Printed and Published by the Government Printer

Nairobi

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CHAPTER 117A**THE AFFORDABLE HOUSING ACT***Commencement: 21st March, 2024**19th March 2024 — Section 4 and 5*

An Act of Parliament to give effect to Article 43(1)(b) of the Constitution; to provide a framework for development and access to affordable housing and institutional housing; and for connected purposes

(Act No. 2 of 2024, L.N. 54/2024.)

PART I – PRELIMINARY**Short title.**

1. This Act may be cited as the Affordable Housing Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires—

“agency” means an institution allocated monies for affordable housing under section 11;

“administrator of the Fund” means the person designated as the administrator of the Fund under section 26(1);

“affordable housing” means housing that is adequate and costs not more than thirty percent of the income of a person per month to rent or acquire;

“affordable housing scheme” means the construction of affordable housing units including such other social amenity, infrastructure or services and the acquisition, laying out, subdivision and the development of land comprised within the area of the scheme necessary for social welfare and trading;

“Board” means the Affordable Housing Board established under section 16;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to affordable housing;

“Chief Executive Officer” means the person appointed as such under section 25;

“collector” means the Commissioner-General of the Kenya Revenue Authority, appointed under section 11(1) of the Kenya Revenue Authority Act (Cap. 469);

“County Committee” means the County Affordable Housing Committee established under Part IV of this Act;

“Fund” means the Affordable Housing Fund established by section 8;

“institutional housing” means housing that is adequate and affordable for public institutions such as universities, colleges, police, defence forces, government pool housing and prisons; and

“Levy” means the Affordable Housing Levy imposed under section 4.

(2) For purposes of this Act, “affordable housing unit” refers to—

- (a) a social housing unit means a house targeted to a person whose monthly income is below twenty thousand shillings;
- (b) an affordable housing unit means a house targeted at a person whose monthly income is between twenty thousand and one hundred and forty-nine thousand shillings;
- (c) affordable middle class housing unit means middle to high income housing targeted at persons whose monthly income is over one hundred and forty-nine thousand shillings; or
- (d) rural affordable housing unit means a house under section 42 targeted at a person living in any area which is not an urban area.

Objects and guiding principles.

3. (1) The objects of this Act shall be to—

- (a) give effect to Article 43(1)(b) of the Constitution on the right to accessible and adequate housing and to reasonable standards of sanitation;
- (b) impose a levy to facilitate the provision of affordable housing and institutional housing; and
- (c) provide a legal framework for the implementation of the affordable housing programmes and projects and institutional housing.

(2) The implementation of this Act shall be guided by—

- (a) the national values and principles of governance under Article 10(2)(b) of the Constitution;
- (b) the principles of public finance under Article 201 of the Constitution; and
- (c) the values and principles of public service under Article 232 of the Constitution.

PART II – IMPOSITION OF AFFORDABLE HOUSING LEVY

Imposition of Levy.

4. (1) There is imposed a levy known as the Affordable Housing Levy.

(2) The Levy shall be at the rate of one point five percent of—

- (a) the gross salary of an employee; or
- (b) the gross income of a person received or accrued which is not subject to the Levy under paragraph (a).

(3) The Levy shall be payable to the collector, for remittance into the Fund, not later than the ninth working day after the end of the month in which the gross salary was due or gross income was received or accrued.

Obligation of an employer.

5. (1) An employer shall—

- (a) deduct and remit the amount referred to in section 4(2)(a) from the gross salary of an employee; and
- (b) remit an amount equivalent to the amount deducted under section 4(2)(a), to the collector.

(2) Without prejudice to the generality of section 6, any person who complies with the provisions of section 5 shall not be liable to pay the levy under section 4(2)(b).

Exemption from imposition of the Levy.

6. The Cabinet Secretary for the time being responsible for the National Treasury may, on the recommendation of the Cabinet Secretary, provide, by notice in the *Gazette*, that—

- (a) any income or class of income; or
- (b) any person or category of persons,

shall be exempt from the application of section 4 to the extent specified in the notice.

Default on payment of amount of Levy.

7. Where an amount of the Levy remains unpaid after the date when it becomes due and payable by a person liable to remit the amount, a penalty equal to three per centum of the unpaid amount shall be due and payable for each month or part thereof that the amount remains unpaid and shall be summarily recovered as a civil debt for the person liable to remit the amount.

**PART III – ESTABLISHMENT AND MANAGEMENT
OF THE AFFORDABLE HOUSING FUND****Establishment of Fund.**

8. There is established a fund to be known as the Affordable Housing Fund which shall be vested in, and managed by, the Board.

Sources of funds.

9. (1) There shall be paid into the Fund—

- (a) monies deducted or payable as the Levy under this Act;
- (b) monies appropriated by the National Assembly for the purposes of the Fund;
- (c) gifts, grants or donations;
- (d) voluntary contributions made under section 52;
- (e) income from investments made by the Fund;
- (f) loans approved by the Cabinet Secretary for the time being in charge of the National Treasury; and

- (g) income accruing to the Fund in the course of the performance of its functions under any written law.

(2) Without prejudice to the generality of subsection (1)(e) and (g), all of the proceeds of sale, rent, and interest shall be paid into the Fund.

Purpose of the Fund.

10. (1) The purpose of the Fund shall be to provide funds for the design, development and maintenance of affordable housing, institutional housing and associated social and physical infrastructure.

(2) Without prejudice to the generality of subsection (1), the Fund shall—

- (a) facilitate the provision of funds for affordable housing and affordable housing schemes in the promotion of home ownership;
- (b) provide low interest loans or low monthly payment home loans, where applicable for the acquisition of affordable housing units within the approved affordable housing schemes;
- (c) facilitate design, development and maintenance of affordable housing schemes in all counties;
- (d) facilitate development of institutional housing units;
- (e) develop long term finance solutions for the development and off-take of affordable housing;
- (f) provide funds for maintenance of any land or building, estate or interest therein, for any of the purposes of the Fund;
- (g) fund any other activities incidental to the furtherance of the objects of the Fund; and
- (h) facilitate the provision of services to the projects under the management of the Fund.

Allocations out of the Fund.

11. (1) The Board may allocate out of the Fund, monies for the—

- (a) development and off-take of affordable housing programmes and projects;
- (b) development of institutional housing; and
- (c) social and physical infrastructure.

(2) The monies may be allocated subject to the annual investment programme under section 15 and the provisions of Part V to the agencies set out in the First Schedule.

(3) The monies may be allocated to county governments in accordance with the Public Finance Management Act (Cap. 412A) and on such conditions as may be prescribed by the Cabinet Secretary for the time being responsible for the National Treasury.

(4) Despite the provisions of subsection (2), the Board shall allocate out of the Fund—

- (a) up to point five (0.5%) percent of the monies to the collector for the collection of the Levy as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury on the recommendation of the Cabinet Secretary;
- (b) up to two percent of the monies to the Board for the administration of the Fund as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury on the recommendation of the Cabinet Secretary; and
- (c) not less than point five percent (0.5%) of the monies to the county committees for the administration of the County Committees as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury.

(5) The monies under subsection (4)(c) shall be appropriated as a conditional grant to county governments.

(6) The First Schedule may be amended by notice in the *Gazette*.

Investments by the Board.

12. The Board may, with the approval of the Cabinet Secretary in charge of Treasury, invest any income that is not immediately required.

Borrowing by the Board.

13. The Board may, with the approval of the Cabinet Secretary in charge of Treasury, borrow funds for the advancement of the objectives of the Act.

Five year affordable housing investment programme.

14. (1) The Board shall develop a five-year affordable housing investment programme every five years.

(2) The Board shall submit the affordable housing investment programme referred to in subsection (1) to the Cabinet Secretary and the Cabinet Secretary for the time being responsible for the National Treasury for onward transmission to the Cabinet for approval.

(3) Upon approval of the affordable housing investment programme by the Cabinet, the Cabinet Secretary shall submit the approved affordable housing investment programme to Parliament.

Annual investment programme.

15. (1) The Board shall prepare an annual investment programme drawn from the five-year affordable housing investment programme which shall include—

- (a) the proposed affordable housing projects;
- (b) the proposed institutional housing projects;
- (c) the proposed allocation of monies out of the Fund;
- (d) the proposed implementing agencies as set out in the First Schedule.

(2) The Board shall submit the annual investment programme referred to in subsection (1) to the Cabinet Secretary.

(3) The Cabinet Secretary shall submit the annual investment programme to Parliament.

Establishment of Board.

16. (1) There is established a board to be known as the Affordable Housing Board.

(2) The Board is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; and
- (c) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.

(3) The Board shall consist of the following—

- (a) a non-executive Chairperson appointed by the President;
- (b) the Principal Secretary to the National Treasury or their representative designated in writing;
- (c) the Principal Secretary of the State Department for the time being responsible for matters relating to affordable housing or their representative designated in writing;
- (d) three other persons who shall be appointed by the Cabinet Secretary, of whom—
 - (i) one shall be a nominee of the Council of County Governors;
 - (ii) one shall be a nominee of the Central Organization of Trade Union; and
 - (iii) one shall be a nominee of the Federation of Kenya Employers;
- (e) three persons, not being public officers, appointed, through a competitive process, by the Cabinet Secretary and who shall possess qualifications in built environment, finance or law; and
- (f) the Chief Executive Officer, who shall have no right to vote at a meeting of the Board.

(4) In nominating a person to be a member under subsection (3)(d), the nominating bodies shall present the names of three persons to the Cabinet Secretary from amongst whom one shall be appointed.

(5) In appointing the members of the Board, the Cabinet Secretary shall—

- (a) ensure that not more than two-thirds of the members are of the same gender;
- (b) take into account regional balance;

- (c) consider special and marginalized groups including youth, women and persons with disability.

(6) The members of the Board referred to in subsection (3), (a), (d) and (e) shall be appointed at different times so that the respective expiry dates of their terms of office shall be at different times.

Functions of the Board.

17. (1) The object and purpose for which the Board is established is to oversee the development of affordable housing, institutional housing and associated social and physical infrastructure in Kenya.

(2) Without prejudice to the generality of subsection (1), the Board shall—

- (a) co-ordinate the optimal utilisation of the Fund in the implementation of programmes and projects relating to the development of affordable housing and institutional housing and associated social and physical infrastructure;
- (b) seek to achieve optimal efficiency and cost effectiveness in the development of affordable housing programmes and projects funded by the Fund;
- (c) based on a five year affordable housing investment programme and annual affordable housing investment programme, determine the allocation of financial resources required for the development of the affordable housing projects, institutional housing and associated social and physical infrastructure;
- (d) manage the Fund and allocate monies in accordance with section 11;
- (e) inspect and enforce compliance to this Act, guidelines and regulations set under the Act;
- (f) monitor and evaluate, by means of technical, financial and performance audits, the delivery of goods, works and services funded by the Fund;
- (g) in implementing paragraph (f), pay due regard to public procurement and disposal regulations and additional guidelines issued or approved by the Cabinet Secretary for the time being responsible for the National Treasury;
- (h) identify, quantify and recommend to the Cabinet Secretary such other potential sources of revenue as may be available to the Fund for the development, of affordable housing programmes and projects and associated social and physical infrastructure for consideration by the Cabinet Secretary to the National Treasury;
- (i) approve the opening and closing of bank accounts of the Fund by the administrator of the Fund;
- (j) approve estimates of revenue and expenditure of the Fund for each financial year; and

- (k) perform such other duties as may be assigned by the Cabinet Secretary in writing.

Qualifications for appointment.

18. (1) A person qualifies to be appointed as the Chairperson of the Board if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has ten years' experience in a senior management position in the public service or private sector; and
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A person qualifies to be appointed as a member of the Board if the person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) has not been convicted of a criminal offence which attracts imprisonment for a term not exceeding six months;
- (c) has not been adjudged bankrupt or entered into a composition or arrangement with the creditors of the person; and
- (d) is not disqualified under any other written law from appointment as such.

Tenure of office.

19. (1) The Chairperson and the members of the Board shall hold office for a term of three years and may be eligible for re-appointment to a further and final term of three years.

(2) Despite the provisions of subsection (1), a member of the Board may be removed from office if that person—

- (a) has been absent from three consecutive meetings of the Board without justifiable cause or the permission of the Chairperson;
- (b) is adjudged bankrupt or enters into a composition or arrangement with the creditors of the person;
- (c) is convicted of an offence involving dishonesty or corruption;
- (d) becomes incapable of carrying out the functions of their office, either arising from an infirmity of mind or body;
- (e) violates Chapter Six of the Constitution; or
- (f) fails to disclose any interest in a matter under consideration by the Board as provided for under section 23(1).

(3) A member of the Board shall cease to be a member of the Board if that member resigns from office by a notice in writing addressed to the appointing authority.

Filling of vacancy.

20. Whenever the office of the Chairperson or a member becomes vacant before the expiry of the term of office, the appointing authority shall, on the

recommendation of the nominating body, where applicable, appoint a person who holds a similar qualification to fill the vacant position for the remainder of the term.

Conduct of affairs and business of the Board.

21. (1) The conduct of affairs and business of the Board shall be in accordance with the Second Schedule.

(2) Subject to subsection (1), the Board may regulate its own procedures.

Committees of the Board.

22. (1) The Board may establish such committees consisting of such members of the Board to deal with such matters as the Board may specify.

(2) The Board may co-opt persons who are not members of the Board to committees established under subsection (1) for a particular reason and such persons shall serve in such committees for such period as the Board may determine.

Disclosure of interest.

23. (1) If a member of the Board is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter the member or the dependants of the member are directly or indirectly interested in a private capacity, the member shall, as soon as practicable, after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion, or vote on any question relating on such matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

(3) Failure to disclose such interest shall lead to the disqualification of the member from holding office as a member.

Remuneration of Board members.

24. The Chairperson and the members of the Board shall be paid such sitting allowances or other remuneration for expenses as advised by the Salaries and Remuneration Commission.

Chief Executive Officer of the Board.

25. (1) There shall be a Chief Executive Officer of the Board who shall be competitively recruited and appointed by the Board, in consultation with the Cabinet Secretary, on such terms and conditions of service as shall be specified in the instrument of appointment or otherwise in writing from time to time.

(2) A person qualifies to be appointed as the Chief Executive Officer if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least ten years' experience in a managerial capacity in built environment, finance, or law; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.

Administrator of the Fund.

26. (1) The Chief Executive Officer shall be the administrator of the Fund.

(2) The administrator of the Fund shall—

- (a) supervise and control the day-to-day administration of the Fund;
- (b) prepare the annual work plan for the Fund for approval by the Board;
- (c) open and operate the accounts of the Fund with the approval of the Board and the National Treasury;
- (d) prepare estimates of annual revenue and expenditure of the Fund and submit to the Board for approval;
- (e) implement policies approved by the Board for the attainment of the objects of the Fund;
- (f) advise the Board on matters relating to the administration of the Fund;
- (g) co-ordinate the monitoring and evaluation of affordable housing projects and programmes financed from the Fund;
- (h) keep books of accounts and other books and records in relation to the Fund of all activities and undertakings financed by the Fund;
- (i) be the custodian of the assets, property, and equipment of the Fund;
- (j) establish proper systems of internal control and management in accordance with provisions of the relevant laws;
- (k) subject to approval of the Board, authorise withdrawals out of the Fund;
- (l) ensure that money held in the Fund, including any earnings or accruals is spent only for the purpose for which the Fund is established;
- (m) prepare, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and showing the expenditure incurred from the Fund in accordance with the Public Audit Act (Cap. 412B); and
- (n) undertake any other duty the Board may assign in furtherance of the objects and purpose of the Fund.

Fund not to be overdrawn.

27. The administrator of the Fund shall ensure that no bank accounts of the Fund are overdrawn.

Administrative costs.

28. The administrative costs of the Fund shall not exceed two percent of the latest audited financial statement of the Fund.

Power of the administrator of the Fund to access information.

29. The administrator of the Fund may access any programme and project related data that the Administrator considers necessary for the performance of their functions under this Act.

Corporation Secretary.

30. (1) There shall be a Corporation Secretary to the Board who shall be competitively recruited and appointed by the Board.

(2) A person shall be qualified to be appointed as the Corporation Secretary if that person—

- (a) holds a degree from a university recognised in Kenya;
- (b) is a Certified Public Secretary and a member of the Institute of Certified Public Secretaries of Kenya in good standing;
- (c) has at least ten years' experience in offering the services of a certified public secretary; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The Corporation Secretary shall be responsible for—

- (a) providing guidance to the members of the Board on their duties, responsibilities and powers and how these should be exercised in the best interests of the Board;
- (b) ensuring that the procedures of the Board are followed and reviewed regularly, and that the members of the Board comply with written law;
- (c) assisting the Chairperson of the Board to organise the activities of the Board, including providing information, preparing agenda, issuing notices and preparing for meetings, conducting evaluations of the Board and development programmes of the Board;
- (d) providing secretarial services to the Board, including ensuring that the work plan of the Board is prepared and adhered to, circulating Board papers in advance of the meeting and keeping the record of attendance of the meetings;
- (e) ensuring that the minutes of the meetings of the Board and committees of the Board are promptly prepared and circulated;
- (f) keeping the members of the Board abreast of and informed on current governance practice;
- (g) keeping a record of conflicts of interest declared by each member of the Board; and
- (h) co-ordinating the governance audit process.

Staff of the Board.

31. (1) The Board may appoint such members of staff as may be necessary for the proper discharge of the functions of the Board, on such terms and conditions of service as the Board may determine.

(2) The staff of the Board shall be the secretariat of the Fund reporting to the Chief Executive Officer.

Delegation of powers.

32. The Board may, by resolution generally or in any particular case, delegate to the administrator of the Fund, an officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of its functions under this Act or under any other written law.

The common seal.

33. (1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except by the order of the Board.

(2) The common seal of the Board shall, when affixed to a document and is duly authenticated, be judicially and officially noticed, and unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

**PART IV – ROLE OF THE COUNTY
GOVERNMENTS IN AFFORDABLE HOUSING**

Establishment of County Rural and Urban Affordable Housing Committees.

34. (1) There is established in every county, a County Rural and Urban Affordable Housing Committee.

(2) The County Committee shall consist of the following—

- (a) a non-executive chairperson who shall be nominated by the county governor;
- (b) the County Executive Committee member responsible for matters relating to housing or their representative designated in writing;
- (c) three other persons who shall be nominated by the county governor, of whom—
 - (i) one shall be a representative of a registered association of traders operating in the county;
 - (ii) one shall be a representative of a registered residential association in the county;
 - (iii) one shall be a member of the public residing within the county;
- (d) the chief officer for the time being in charge of housing, who shall be an *ex-officio* member and the secretary to the County Committee.

(3) A person nominated under subsection (2)(a) and subsection (2)(d), shall be vetted and approved by the county assembly.

(4) In nominating a person as a member under subsection (2)(a) and subsection (2)(d), the county governor shall—

- (a) ensure that not more than two-thirds of the members are of the same gender;

- (b) ensure that ethnic minorities within the county are adequately represented; and
- (c) consider marginalized groups including youth and persons with disability.

(5) The members of the Committee shall be appointed within thirty days of the commencement of this Act.

Qualifications for appointment.

35. (1) A person qualifies to be appointed as the Chairperson of the County Committee if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least five years' experience in matters relating to housing, built environment, banking, or finance;
- (c) has resided in the county for a period of not less than five years; and
- (d) meets the requirements of Chapter Six of the Constitution.

(2) A person qualifies to be appointed as a member of the County Committee, if the person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) has not been convicted of a criminal offence which attracts imprisonment for a term not exceeding six months;
- (c) has not been adjudged bankrupt or entered into a composition or arrangement with the creditors of the person; and
- (d) is not disqualified under any other written law from appointment as such.

Tenure of office.

36. (1) The Chairperson and members of the County Committee, shall hold office for a term of three years and may be eligible for reappointment for an additional final term of three years.

(2) Notwithstanding the provisions of subsection (1), a member of the County Committee may be removed from office if that person—

- (a) has been absent from three consecutive meetings of the Committee without justifiable cause or the written permission of the Chairperson;
- (b) is adjudged bankrupt or enters into a composition or arrangement with the creditors of the person;
- (c) is convicted of an offence involving anti-economic crimes or corruption;
- (d) becomes incapable of carrying out the functions of their office due to an infirmity of mind or body;
- (e) violates Chapter Six of the Constitution; or

- (f) fails to disclose any interest in a matter under consideration by the Committee as provided for under this Act.

Remuneration of the County Committee members.

37. The Chairperson and the members of the County Committee shall be paid such sitting allowances or other remuneration for expenses as recommended by the Salaries and Remuneration Commission.

Conduct of affairs and business of the County Committee.

38. (1) The conduct of affairs and business of the County Committee shall be in accordance with the Second Schedule to this Act.

(2) Subject to subsection (1), the Committee may amend its own procedures for the better carrying out of its functions.

Functions of the County Committee.

39. The County Committee shall—

- (a) in consultation with the Board, develop a framework for the attainment of affordable housing in the county;
- (b) advise the governor on affordable housing programmes within the county;
- (c) develop a five-year affordable housing investment programme for the county and annual housing investment programme for the county;
- (d) collaborate with the boards of cities and municipalities in developing plans for social and physical infrastructure related to affordable housing pursuant to section 21 of the Urban Areas and Cities Act (Cap 303);
- (e) make periodical written reports on the five-year affordable housing investment programme for the county and annual housing investment programme for the county to the Board;
- (f) to make annual reports to the county assembly on the implementation of affordable housing in the county; and
- (g) to perform such other duties as may be assigned by the county governor in writing.

County legislation.

40. Nothing in this Act shall preclude county governments from enacting legislation related to affordable housing in the counties.

PART V – IMPLEMENTATION OF THE AFFORDABLE HOUSING**Allocation of land.**

41. (1) The provisions of the Land Act (Cap. 280) shall, subject to subsection (2), apply to the allocation of public land for the implementation of the affordable housing scheme and development of institutional housing scheme.

(2) Land held by a county government shall not be allocated unless the Board has, in the prescribed manner, carried out public participation and stakeholder engagement with the affected community within the county.

Agreement with national government agency.

42. (1) The Board may appoint a national government agency to develop affordable housing units and the associated social and physical infrastructure.

(2) Subject to the Public Finance Management Act (Cap. 412A), the Board may disburse such monies to the national government agency for the performance of the functions under subsection (1).

Agreement for institutional housing.

43. The Board may enter into an agreement with a public institution for—

- (a) the development of institutional housing units; and
- (b) the repayment of the monies paid out of the Fund for the development of the institutional housing units.

Agreement with private institutions and persons.

44. (1) The Board may enter into an agreement with a private institution—

- (a) to develop and construct affordable housing units and associated social and physical infrastructure; and
- (b) for the supply of goods and materials in connection with the construction of affordable housing units.

(2) The Board shall, before entering into an agreement under subsection (1), publish in at least two newspapers of nationwide circulation and on electronic media, a notice of intention to enter into an agreement and invitation of tenders from the public in the prescribed form.

(3) The Cabinet Secretary may, in consultation with the Board, prescribe guidelines for the publication of a notice under subsection (2) and invitations to tender.

Agreement for financing.

45. (1) The Board may enter into an agreement with any approved institution or mortgage scheme to provide financing for the off-take of affordable housing units.

(2) Subject to the Public Finance management Act (Cap 412A), the Fund may disburse such monies to the approved institution as may be necessary for the performance of the function under subsection (1).

Community support.

46. In the development of affordable housing units, the Board shall—

- (a) as far as possible ensure locally available materials are used;
- (b) ensure labour is sourced from the local communities; and

- (c) where a project is near a university or technical vocational institution ensure that the students get internships or practical experience from the projects where affordable housing projects are carried out.

Priority of ownership for slum residents.

47. The Board shall, where an affordable housing project is to be implemented on land on which exists a settlement—

- (a) issue a notice, in the prescribed form, to the residents in that settlement of the intended implementation of the project;
- (b) put in place a mechanism for the resettlement of the residents; and
- (c) offer to the residents in that settlement, the first right of purchase of a unit in the project.

**PART VI – ELIGIBILITY CRITERIA AND APPLICATION
PROCEDURE FOR AFFORDABLE HOUSING UNIT**

Eligibility criteria.

48. (1) A person is eligible for allocation of one affordable housing unit if the person meets the criteria prescribed in regulations.

(2) In this section, a person means a natural person.

Application for allocation of affordable housing unit.

49. (1) A person who meets the criteria set out under section 48 and desires to be allocated an affordable housing unit, shall make an application to the Board in the specified manner.

(2) An application made under subsection (1) shall be accompanied by—

- (a) proof of requisite deposit as may be prescribed by the Cabinet Secretary;
- (b) a copy of the national identity card or such other form of identification as may be prescribed by the Cabinet Secretary;
- (c) copy of incorporation certificate in the case of a body corporate;
- (d) a copy of Kenya Revenue Authority personal identification number certificate and tax compliance certificate; and
- (e) such other information as may be determined by the Board.

(3) In determining the allocation of an affordable housing unit under this section, the Board shall give preference to marginalised persons, vulnerable groups, youth, women and persons with disabilities.

Off-taking of affordable housing units.

50. (1) The Board may off-take affordable housing units under an affordable housing scheme if the affordable housing scheme—

- (a) has been approved by the Board;
- (b) meets policy and statutory requirements; and

(c) meets any other criteria or conditions set by the Board.

(2) The Cabinet Secretary may in consultation with the Board issue regulations for the better carrying out of subsection (1).

Loan interest rate.

51. The interest rate or administration fee for a loan issued under this Act, where applicable, shall be payable on a reducing balance at such rate as may be prescribed by the Cabinet Secretary.

Voluntary savings.

52. (1) An eligible person may make voluntary savings with the Fund for purposes of raising a deposit towards the allocation of an affordable housing unit.

(2) An administrator of the Fund shall open a separate bank account where voluntary savings shall be kept and any interest arising from investment of voluntary savings shall be credited to this account.

(3) The administrator of the Fund shall issue an account number to each person making a voluntary saving.

(4) A person who has made a voluntary saving and has not been allocated an affordable housing unit—

- (a) may withdraw their savings by issuing ninety days' written notice to the agency for refund with any accrued interest; or
- (b) may apply to the Board for approval of issuance of an affordable mortgage to develop a rural affordable housing unit.

(5) An application in subsection (4)(b) will be accompanied by an agreement that the applicant agrees to have their saved deposits and the land upon which the unit is to be built to be used as collateral.

(6) Upon approval by the Board, the applicant shall cause a charge on the title in subsection (5) to be executed in favour of the Board.

PART VII – OWNERSHIP OF AFFORDABLE HOUSING UNITS

Issuance of a certificate of ownership.

53. (1) The Board shall, with the approval of the Cabinet Secretary, transfer the ownership of an affordable housing unit to a qualified applicant upon completion of payment of the agreed price.

(2) The Registrar shall not, without the written consent of the Board, register a transfer of any housing unit under this Act.

(3) The certificate of the Board that any affordable housing unit has been sold to an individual under the provisions of this Act shall be conclusive evidence of consent under subsection (2).

(4) The registration of an owner of the affordable housing units shall be undertaken in accordance with the Sectional Properties Act (Cap. 286).

Restrictions to owners of affordable housing unit.

54. Except with the prior written consent of the Board, a purchaser of an affordable housing unit under this Act shall not by contract, agreement or otherwise, sell or agree to sell his or her unit or any interest therein to any other person.

PART VIII – FINANCIAL PROVISIONS**Accounts and audit.**

55. (1) The administrator of the Fund shall cause to be kept proper books and records of account of the income, expenditure and assets of the Fund.

(2) Within a period of three months from the end of each financial year, the administrator of the Fund shall submit to the Auditor-General the accounts of the Fund together with—

- (a) a statement of the income and expenditure of the Fund during the year; and
- (b) a statement of the assets and liabilities of the Fund on the last day of that year.

(3) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act (Cap. 412B).

PART IX – MISCELLANEOUS PROVISIONS**Misappropriation of funds of the Fund.**

56. (1) A person commits an offence if the person misappropriated any funds or assets of the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act.

(2) A person who contravenes the provisions of subsection (1) shall be liable, on conviction—

- (a) to a fine not exceeding twenty million shillings or imprisonment of a term not exceeding ten years, or both; and
- (b) an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.

(3) The mandatory fine referred to in subsection (2)(b) shall be determined as follows—

- (a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (2)(b);
- (b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (2)(b), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.

Other offences.

57. (1) A person commits an offence if the person —

- (a) fails to give information or gives inaccurate or misleading information or falsifies information or misrepresents information required under this Act; or
- (b) having possession of, or control over, or access to any documents, information, returns or forms relating to applications or granting of loans, communicates anything contained therein —
 - (i) to any person other than a person to whom they are authorized by the Board to communicate it or
 - (ii) otherwise than for the purposes of this Act.

(2) A person who contravenes the provisions of subsection (1) shall be liable, on conviction to a fine not exceeding ten million shillings or imprisonment of a term not exceeding five years, or to both.

Protection from personal liability.

58. No matter or thing done by any person under this Act shall, if the matter or thing is done in good faith and in accordance with the law, render that person personally liable to any action, claim or demand whatsoever.

Regulations.

59. (1) The Cabinet Secretary may, in consultation with the Board, make Regulations for better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations made under this section may prescribe—

- (a) the criteria for exemptions granted under section 6;
- (b) criteria for eligibility of allocation of an affordable housing unit under section 48;
- (c) requisite deposit for the housing under section 49(2);
- (d) identification documents under section 49;
- (e) regulations under Part V;
- (f) the criteria for change of affordable housing unit;
- (g) the provisions on voluntary savings;
- (h) the provisions relating to off-take of affordable housing units;
- (i) the inclusivity and diversity within affordable housing schemes;
- (j) the application and integration of technology-based platforms in the administration and management of affordable housing schemes;
- (k) the typology and dimensions for affordable housing units relative to the incomes of the individual applicants;

- (l) the procedural guidelines for the Board to off-take affordable housing units under an affordable housing scheme;
- (m) the interest rate or administration fee for a loan issued under section 51; and
- (n) criteria for eligibility of allocation of a low interest mortgage under section 52.

(3) The Cabinet Secretary shall table before Parliament, the regulations made under this section within thirty days of commencement of this Act.

(4) Regulations made under this section shall not take effect unless approved by a resolution passed by Parliament.

(5) If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after submission to it for approval, the House shall be deemed to have approved those regulations.

Consequential amendment and transition.

60. (1) The Acts specified in the first column of the Third Schedule are amended in the manner specified in the second column.

(2) Any payment made or action taken under the sections repealed under subsection (1) shall be deemed to have been paid or taken under this Act.

(3) Any commitment or obligation on the National government on affordable housing which have arisen or made in accordance with an Act of Parliament shall be deemed to be a commitment or obligation made under this Act.

(4) Any ongoing project or programme on affordable housing implemented pursuant to a commitment or obligation under subsection (3) shall be deemed to be a project or programme commenced under this Act.

Revocation of affordable Housing Fund Regulations.

61. (1) All regulations in force immediately before the commencement of this Act and applicable to affordable housing and voluntary contributions are hereby revoked.

(2) All monies which immediately before the commencement of this Act, that were held by the National Housing Corporation under the Housing Fund Regulations, 2018 shall vest in the Fund and shall be deposited into the Fund.

(3) The National Housing Corporation shall account for and give a record of all contributions made under the Housing Fund Regulations, 2018.

(4) The administrator of the Fund shall notify the contributors and create an account for each contributor.

FIRST SCHEDULE

(ss. 11(2), (6),
15(1)(d))LIST OF AGENCIES FOR IMPLEMENTING THE
AFFORDABLE HOUSING PROGRAMMES AND PROJECTS

1. County governments.
2. National Housing Corporation.
3. The Kenya Slum Upgrading, Low-Cost Housing and Infrastructure Trust Fund established under the Government Financial Management (Kenya Slum Upgrading, Low-Cost Housing and Infrastructure Trust Fund) Regulations, 2006.
4. State Department responsible for matters relating to affordable housing.
5. National Social Security Fund.
6. National Construction Authority.
7. State Department responsible for matters relating to Public Works.
8. The private sector agencies as may be approved by the Board to support affordable housing and institutional housing.

SECOND SCHEDULE

(ss. 21(1),
38(1))

CONDUCT OF AFFAIRS AND BUSINESS OF THE BOARD

Meetings.

1. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) The notice for a meeting of the Board shall be in writing, and shall be for a period of at least seven days from the expected day of the meeting.

(3) The Chairperson of the Board shall preside over all meetings of the Board and in the absence of the Chairperson, a person designated by members of the Board present at a meeting shall preside.

(4) The Chairperson of the Board may, on the written request made by majority of the members of the Board and within seven days of the request, convene an extraordinary meeting of the Board at such time and place as the Chairperson may appoint.

(5) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

Quorum.

2. The quorum for the conduct of business at a meeting of the Board shall be majority of the total members of the Board.

Decisions of the Board.

3. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in the case of an equality of votes the Chairperson or person presiding shall have a casting vote.

| THIRD SCHEDULE | | | (s. 60(1)) |
|---------------------------------------|-----------------------------|--|------------|
| CONSEQUENTIAL AMENDMENTS | | | |
| ACT | SECTION | AMENDMENTS | |
| The Employment Act (No. 11 of 2007) | s. 31B | Repeal | |
| | s. 31C | Repeal | |
| The Income Tax Act (Cap. 470) | s. 15(2) | Insert the following new paragraph immediately after paragraph (g)— (ga) expenditure incurred by a person carrying on a business in payment of Affordable Housing Levy as provided under section 5(b) of the Affordable Housing Act, 2024 | |
| | s. 30A | Insert the following subsection immediately after subsection (1)— (1A) A resident individual who proves that in a year of income, the individual paid the affordable housing levy, shall for that year of income be entitled to the affordable housing relief | |
| | Third Schedule, paragraph 9 | Delete the word “three” and substitute therefor with the words one point five” | |
| The Kenya Revenue Act (No. 2 of 1995) | First Schedule, Part II | Insert the following paragraph immediately after paragraph 14: “15. The Affordable Housing Act, 2024” | |