



## SEYCHELLES PENSION FUND

<b>Title</b>	<b>Surcharges Policy</b>
Policy Number	SPF/Policy/PENSION/3/2020
Effective Date	November 2020
Review Year	
Approved by	Chairman Board of Trustees



# **SEYCHELLES PENSION FUND**

## **Surcharges Policy**

### **1.0 Introduction**

The Contribution Section of SPF is responsible to ensure that all employers who are employing Seychellois employees are complying with the SPF Act and Regulations, 2005 and has to pay all pension related contributions within the required timeframe. That is, contribution for the month is payable on or before 21<sup>st</sup> day of the following month.

Section 23(1) of the Act provides for the imposition of surcharges on the late payment of employer's share of contributions and voluntary contribution elected by the employee to be deducted from his/her salary. This is to ensure the contributions for each month are paid on time and is more as a deterrent to comply with the SPF Act and a measure used to penalise defaulters.

### **2.0 Definition of surcharges**

Surcharges is a fee applicable when payment of employer's mandatory contributions and voluntary contribution which an employee has elected an employer to pay as a deduction from his/her wages is paid late/after the prescribed due date.

### **3.0 Objective**

The aim of this policy is to ensure that:

- i. the implementation of surcharges is being applied in compliance with the SPF Act and Regulations;
- ii. Surcharges are calculated and charged on all late and non-payment of contributions;
- iii. the necessary is done to collect outstanding surcharges; and
- iv. procedure for waiver of surcharges is facilitated where all necessary steps has been undertaken to recover outstanding surcharges.

### **4.0 When is surcharge applicable?**

Surcharges are only applicable on late/non-payment of contributions. Contributions are payable on or before the 21<sup>st</sup> of the following month.

For example, contributions for the month of October 2020 is due and payable on or before 21<sup>st</sup> November 2020.

If contributions remain unpaid after this date, then a late payment surcharges at the prescribed rate is applicable.

### **5.0 What is the prescribed rate of surcharge applicable?**

The current prescribed rate of surcharge applicable is a sum equal to 5% per month of the unpaid contribution of the employer, calculated to the next higher rupee or a sum of SCR 10 per month whichever is higher.

### **6.0 Calculation of surcharges.**

Surcharges are calculated on the employer's share of the monthly mandatory contribution and the voluntary contribution (if any) which a worker elected the employer to deduct from his/her salary and to be paid directly to SPF. Annex 1 shows the method for calculation of surcharges and template of breakdown of surcharges due.

## **7.0 Payment of surcharges**

Surcharges should be paid as soon as it has been raised. The Contribution Section needs to collect or recover the payment of surcharges from employers as soon as it becomes due by contacting employers through any means possible and followed up in writing.

If an employer is unable to pay the surcharges, he/she will need to inform SPF, in writing, of the reason why they cannot settle their debt to SPF. Chief Pension Administrator (CPA) of SPF will then consider offering them an opportunity to repay the surcharges through a payment plan. This will specify the timeframe and intervals for repayment. Any such agreement between SPF and an employer will need to be made into a formal Repayment Agreement, as per Annex 2.

In the event that the employer defaults on this Repayment Agreement, CPA will assess the need for a waiver based on the case specified in section 10 and submit its recommendation to CEO for approval.

All surcharges collected will be credited as other income, as it is a charge paid by employers only.

## **8.0 Surcharges waiver**

As per Board Resolution 2/2017, the Board has delegated its power to the CEO of SPF, under section 24(2) of the SPF Act, to waive surcharges on the late payment or non-payment of contributions.

Waiver of the surcharges can only be considered after CEO is satisfied that every reasonable effort has been made by SPF to collect the outstanding surcharges.

## **9.0 Circumstances whereby surcharges may be waived in full**

There are circumstances which can give rise to full waiver of surcharges, as follows:

- a. Change of management overseeing the administrative aspect of the business
- b. First time offence and/or unaware of the requirement to pay contribution as a first-time employer; and
- c. When a business ceases to exist or function or has been or is being liquidated and the Court has not assigned any funds to SPF as a preferential creditor.

## **10.0 Circumstances where surcharges should not be waived or may be partially waived.**

Partial waiver of surcharges should be given only in the following circumstances and as per the specific percentage of waiver as per the table below:

<i><b>Condition</b></i>	<i><b>Percentage of waiver</b></i>	<i><b>Possible Example</b></i>
Deliberate evasion	0%	Employer's failure to pay contribution was intended.
Understatement	20%	Employer's paid less than required (first time only)
Inadvertent Error	20%	Non-payment arising as a result of genuine mistake (first time only)

Genuine misunderstanding legislation	50%	A situation whereby the employer did not understand the regulations (first time only).
Financial Constrain	70%	An employer can provide proof that the business is having financial difficulty
Voluntary Disclosure	80%	A situation whereby the employer came forward to disclose non-payment (first time only)

#### **11. Approval and Review of Policy**

This policy, and any review thereof, shall be approved by the SPF Board of Trustees. The Policy shall be reviewed when the need arises.

**Annex 1: Template of surcharges calculation**

Breakdown of surcharges due on unpaid contributions for the period Janaury to March 2020				
Employer Name:	John Smith			
Employer Number:	988-1-0000-000			
Surcharges calculated as at 29th October 2020				
Month of	Month	No. of Months	E/Er Mandatory	Surcharges
Contribution Payable	Due	Outstanding	& E/EE Volunatry contribution	Due
Jan-20	21 February	9	600.00	270
Feb-20	21 March	8	600.00	240
Mar-20	21 April	7	600.00	210
		TOTAL	1,800.00	720
Note: Surcharges is calculated at 5% per month of the unpaid contribution subject to a minimum of SR10:00				



## **Annex 2 : Template of Repayment Agreement for employers**

### **REPAYMENT AGREEMENT**

This Agreement is made on the [insert day i.e. 05<sup>th</sup>] day of [insert month], 2020

#### **BETWEEN:**

**SEYCHELLES PENSION FUND**, a statutory body duly established under the Seychelles Pension Fund Act 2005, as amended from time to time, of P.O Box 576, Caravelle House, Victoria, Mahe, (hereinafter "SPF"), duly represented herein by its Chief Executive Officer, Mrs Lekha Nair.

#### **AND**

[insert Employer Name], having its registration number [insert registration no ], presently of [insert employer's address], (hereinafter referred to as "if it's a long company name, include the shortened version of the name, otherwise delete "), duly represented herein by [insert owner's/representative's name].

#### **Whereas:**

- A. [insert company name] is a company in the business of [insert type of business providing] in Seychelles;
- B. [insert company name] is desirous of entering into a repayment Agreement with SPF as defined more fully hereunder;
- C. The parties require a formalization of the agreement between themselves to set out the terms and conditions on which [insert company name] shall pay SPF its contributions and any applicable surcharge;

NOW THEREFORE, the parties have agreed as follows:

#### **1. REPAYMENT**

1.1 [insert company name] owes SPF pension contributions amounting to the total of [insert total amount of contributions] and surcharges amounting to the total of [insert the amount of surcharges if any] (hereinafter "the arrears").

1.2 Subject to clause 1.1, [insert company name] hereby undertakes to repay the arrears by monthly installments in the following manner:-

- a. [insert company name] shall pay the first installment for the sum of Seychelles Rupees [insert amount in words] (SCR INSERT AMOUNT IN FIGURES) in cash to SPF at its registered office commencing on or before insert date here .....,2020.
- b. [insert company name] shall pay the sum of Seychelles Rupees (insert amount in words) (SCR insert amount in figures) in cash to SPF thereafter payable every (insert date) of the month as per Schedule 1 of this Agreement.
- c. (insert company name) shall make the installment payment to SPF on or before (insert date) as agreed by the parties.

## 2. TERMINATION OF THE AGREEMENT

The parties hereby agree that the following instance may result in the immediate termination of this Agreement:

(a) In relation to SPF:

at any time in the event that [insert company name] defaults on its monthly repayments after failing to settle one months' worth of arrears.

Upon termination of this Agreement, SPF shall have the right to initial legal proceedings against [insert company name].

## EFFECTIVE DATE & TERM

This Agreement is effective as of the date hereof and shall be for a duration of [insert the length of time this agreement will be in force i.e. 6 months, 1 year, 2 years etc] (in accordance with Schedule 1) unless extended or renewed by written agreement between the parties.

## VARIATION AND ASSIGNS

Any variation to this Agreement shall be void unless agreed to in writing by both parties and neither party may assign any rights or obligations under this agreement unless agreed to in writing by the other party. [insert company name] hereby acknowledges that the obligations under this Agreement shall bind its heirs, successors in title and assignees.

## GOVERNING LAW

This Agreement shall be governed by the laws of the Republic of Seychelles as enacted from time to time.

IN WITNESS WHEREOF the parties have signed this Agreement in duplicate on the day, month and year above written.

.....  
For and on behalf of SEYCHELLES

.....  
For and on behalf of [Employers name]

## PENSION FUND

### SCHEDULE 1

#### INSTALMENT PAYMENTS

<u>No.</u>	<u>Amount Due</u>	<u>Date Payable</u>	<u>Date Paid</u>	<u>Receipt Number</u>	<u>Initials</u>
1					
2					