

## **PART 27 – SURCHARGE AND PENALTY**

### **1. LEGAL BASIS:**

**Section 102 of the Act** lays down the circumstances under which surcharge may be imposed. These include omission to collect revenue due to the Government, failure to deposit or account for public moneys, improper payment, failure to observe prescribed rules and procedures while approving requisitions for expenditure including over commitment of funds. These also include implementing expenditure decisions resulting in loss of public moneys or damage to State property, and including shortage of stores. Surcharge may also be imposed for any other failure to comply with the provisions of the Act including regulations and finance instructions.

### **2. WHO IMPOSES SURCHARGE**

The surcharge may be imposed by Departmental Heads in relation to matters falling within their respective departmental business. The Secretary for Finance has, however, wider powers and may impose surcharge even in the case of matters falling outside his department.

Surcharge may be imposed on any person who is or has been an accountable officer. The term "accountable officer" has been defined under **Section 6 of the Act** to include any officer. The term also includes a private person who "authorises the collection or payment of public moneys or accounts for stores".

### **3 AMOUNT OF SURCHARGE**

The amount of surcharge will vary according to the circumstances of each case, but it is intended that where a loss has been caused to the Government due to non-collection of dues, overpayment, damage to property, and shortage of stores, the surcharge process should aim to recover the loss in full.

Where the loss to the Government is not clearly established and is likely or where the provisions of the Act, regulations and financial instructions have not been observed or in any other case where there is a legal basis to impose surcharge the amount of surcharge will depend on the circumstances of the case.

### **4. PROCEDURE FOR IMPOSITION**

- 4.1 Before imposing a surcharge, the Departmental Head should obtain a detailed report on the matter (which forms the basis for surcharge) and satisfy himself that there are reasonable grounds for surcharge.
- 4.2 He should then issue a Notice of Proposed Surcharge in the form attached. (Appendix I - Form 1)

- 4.3 If there is no satisfactory explanation, or if there is no explanation within the period mentioned in the Notice (Form 1), the Departmental Head may decide to impose the surcharge. He will then forward to the person surcharged a notice in the form attached (See Appendix I - Form 2).
- 4.4 The same procedure as above will be followed by the Secretary for the Department of Finance if he exercises his authority to impose surcharge under **Section 102 of the Act**.

## 5. PROCEDURE FOR RECOVERY

According to **Section 106 of the Act**, the amount of surcharge may be recovered from a person as a debt. If amounts are due to that person by way of salary or other employment benefit, the Department should recover the amount of surcharge from the amounts payable after obtaining the approval from Department of Finance.

## 6. PENALTY AND OFFENCE

- 6.1 **Section 102 of the Act** lays down the circumstances in which a penalty may be imposed on an individual person or any other person for an offence. These circumstances include refusal by a person to co-operate through non-attendance of meetings demanded by the Minister, Auditor General or the Secretary, Department of Finance or non-production of books or amounts in his possession. These circumstances also entail not providing the answers to lawful questions or refusal to pay public money under the Act. In addition, the circumstances also include refusal or wilful neglect by the Departmental Heads to provide reports prescribed by the Secretary, Department of Finance under **Section 4 of the Act** or over-commitment of funds without care.
- 6.2 In some cases, where the seriousness of the circumstances warrants, it would be legally possible to proceed with prosecution of penalty for an offence in addition to surcharge under **Section 102 and 103 of the Act**. The penalty for an offence prescribed under the Act includes imposition of fines up to K20,000 and suspension without pay in the case of an individual person or imposition of a fine up to K50,000 for other than an individual person.
- 6.3 A penalty for an offence under **Section 112 of the Act** may be imposed by the Minister or the Secretary, Department of Finance.
- 6.4 The amount of fine or the nature of penalty may be decided on circumstances in each case with reference to **Section 112 of the Act**.

- 6.5 The procedure for imposing a penalty would be similar to the procedure for imposing a surcharge. However, the exact procedure should be decided in each case in consultation with the State Solicitor.

**APPENDIX I - Form 1****THE INDEPENDENT STATE OF PAPUA NEW GUINEA****Public Finances (Management) Act 1995****NOTICE OF PROPOSED SURCHARGE**

To:

Whereas, being an accountable officer under **Section 6 of the Act**, it appears that you did

\* on the                      day of                      19-----

\* between

\* the                      day of                      19-----

at

(Description of act or omission under **Section 102 (c) to (i) of the Act**).

I,                      Secretary/Provincial Administrator, Department/Province of  
advise that by virtue of **Sections 102 and 103 of the Act**, I propose to surcharge you  
with the amount of K                      being the loss sustained under **Section 102 (j), of the  
Act**, and take notice that I shall consider any submission made by you under **Section  
103 (d) of the Act** made by you within seven (7) days from the receipt of this notice.

DATED the                      day of                      19 -----

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Secretary/Provincial Administrator  
Department/Province of .....

**Form 2 - NOTICE OF IMPOSITION OF SURCHARGE**

THE INDEPENDENT STATE OF PAPUA NEW GUINEA

Public Finances (Management) Act 1995

## NOTICE OF IMPOSITION OF SURCHARGE

To:

Further to Notice of Proposed Surcharge dated day of 19  
and after consideration of submissions made by you, you are hereby notified  
that being an accountable officer under **Section 6 of the Act** you did

\* on the                      day of                      19---

\* between

\* the                      day of                      19---

(Description of act or omission as set out in Notice of Proposed Surcharge).

I,                      Secretary/Provincial Administrator, Department/Province of  
hereby notify you that by virtue of **Sections 102 and 103 of the Act**, you are  
surcharged with the amount of K                      being the loss sustained under **Section 102 of  
the Act**. You may appeal against the imposition of this surcharge within the period of  
one month from the date of receipt of this notice, or such other period allowed, under  
**Section 105 of the Act**.

DATED the                      day of                      19-----

.....

Secretary/Provincial Administrator  
Department/Province of .....