

Seychelles

Seychelles Pension Fund Act, 2005

Act 8 of 2005

Legislation as at 20 December 2018

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Seychelles Pension Fund Act, 2005

Act 8 of 2005

Published on 19 August 2005

There are multiple commencements

Provisions	Status
Part I (section 14); Part II (section 34); Part III (section 51); Part IV (section 151)	commenced on 19 August 2005.
Part V (section 172); Part VI (section 304); Part VII (section 475); Part VIII (section 56); Part IX (section 576); Part X (section 657)	commenced on 1 January 2006.
Part V, section 18(4A)	commenced on 16 July 2007 by Act 3 of 2007 .
Part V, section 29A	commenced on 27 September 2010 by Act 21 of 2010 .
Part V, section 18(7); Part VI, section 35(1), 35(2), 35(3), section 40(5), section 43(3), 43(4), 43(5); Part VII, section 47(3), section 50(2)(a), 50(2)(b), section 51(1)(a), 51(1)(b), 51(1)(c), 51(1)(d), 51(1)(e), section 53(3), 53(4), 53(5), 53(6), section 55(1), 55(2), 55(3); Part VIII, section 56(6), 56(7), 56(8)	commenced on 20 December 2018 by Act 13 of 2018 .

[This is the version of this document as it was from 20 December 2018 to 26 December 2019.]

[Amended by [Seychelles Pension Fund \(Amendment\) Act, 2007 \(Act 3 of 2007\)](#) on 16 July 2007]

[Amended by [Seychelles Pension Fund \(Amendment\) Act, 2010 \(Act 21 of 2010\)](#) on 27 September 2010]

[Amended by [Seychelles Pension Fund \(Amendment\) Act, 2018 \(Act 13 of 2018\)](#) on 20 December 2018]

AN ACT to repeal and replace the Seychelles Pension Scheme Act (Cap 220) and to repeal the National Provident Fund Act (Cap 142)

ENACTED by the President and the National Assembly.

Part I – Preliminary

1. Short title and commencement

This Act may be cited as the Seychelles Pension Fund Act, 2005 and Parts I to IV shall come into operation on the date of publication of the Act in the Official *Gazette* and Parts V to X shall come into operation on 1st January 2006.

2. Interpretation

In this Act —

"**benefit**" means a benefit under [section 30](#);

"**Board**" means the Board of Trustees of the Seychelles Pension Fund constituted under [section 5](#);

"**Chief Executive Officer**" means the Chief Executive Officer of the Fund appointed under [section 15](#);

"**contribution**" means the mandatory or voluntary contribution payable under this Act;

"**Continuous contribution**" in relation to any period, means regular payment of contributions to the Seychelles Pension Scheme, the Fund or the Social Security Fund, as the case may be, provided that a break in the payment of monthly contributions for a period not exceeding ninety days shall not be considered as a break of continuous contribution, for the purpose of a claim for a retirement pension, incapacity pension, surviving spouse's pension or children's pension;

"**court**" means the Supreme Court;

"**dependant**" means a person who is maintained by a member at the time of the member's death, but does not include the spouse of that member;

"**employer**" means a person who or which employs a worker and includes the Government of Seychelles;

"**Fund**" means the Fund established by [section 3](#);

"**mandatory contribution**" means the contribution payable under [section 18\(1\), \(2\) and \(3\)](#);

"**Medical Board**" means the Medical Board appointed under [section 56](#);

[definition of "Medical Board" inserted by section 2(a)(i) of [Act 13 of 2018](#)]

"**member**" means a person who is or becomes a member of the Fund under [section 17](#);

"**Minister**" means the Minister responsible for Finance;

"**self-employed person**" means an individual —

- (a) who is carrying on a business of his own; or
- (b) who is a partner in a partnership which is carrying on a business and who shows to the satisfaction of the Chief Executive Officer that he is liable to pay business tax in relation to the business under the Business Tax Act whether or not the income of the business is exempt under that Act;

"**retirement**" means retirement from work at the age of 60 years or at any time thereafter;

[definition of "retirement" substituted by section 2(a)(ii) of [Act 13 of 2018](#)]

"**spouse**", in relation to a deceased member, means —

- (a) where the member was married and was at the time of the member's death living with and maintaining his married partner, that married partner; or
- (b) where the member had, at the time of the member's death, been cohabiting with a person as the common law wife or husband of the member, even if the member had not been divorced, for a period of at least seven years before the member's death and had maintained that person during that period that person;

[definition of "spouse" amended by section 2(a)(iii) of [Act 13 of 2018](#)]

"**voluntary contribution**" means a contribution payable under [section 18\(4\) and \(5\)](#);

"**worker**" means a person of or above the age of 15 years in full time or part time employment in Seychelles or on a Seychelles ship or aircraft or in an agency or diplomatic mission of Seychelles abroad and liable to pay Social Security contributions under the Social Security Act and includes a stevedore or a casual worker.

[definition of "worker" amended by section 2(a) of [Act 21 of 2010](#)]

Part II – Establishment of the Fund

3. Establishment of the Seychelles Pension Fund

- (1) There is hereby established the Seychelles Pension Fund for the purposes of this Act.
- (2) The Fund shall be a body corporate.

4. Objectives

The objectives of the Fund shall be—

- (a) to provide for the financial security of members by the payment of a monthly pension under this Act;
- (b) to provide for the financial security of the surviving spouse and children of members who die before retirement by the payment of a monthly surviving spouse's pension or children's pension;
- (c) to provide in accordance with the Act for the financial security of those who are incapacitated due to injuries or illness while being employed or thereafter;
- (d) to provide death benefit where a member dies before retirement and has no surviving spouse living with him or has no children at the time of death;
[paragraph (d) amended by section 2(b) of [Act 13 of 2018](#)]
- (e) to enable workers to spend their retirement in basic comfort;
- (f) to promote individual voluntary contributions to the Fund;
- (g) to enable members to use the voluntary contributions to their credit as security for a housing loan or a loan for medical treatment.

Part III – Board of Trustees

5. Establishment of the Board etc.

- (1) The Fund shall be administered by a Board of Trustees.
- (2) The Board, shall subject to the Act, be responsible for the overall management of the affairs of the Fund including the operation of the Fund and making investment decisions.
- (3) *[subsection (3) repealed by section 2(c) of [Act 13 of 2018](#)]*
- (4) The Board may set up committees to assist the Board in Investment, Audit, Administrative and other matters and provide the chairmen and members of the committees with their terms of reference.

6. Membership of the Board etc.

- (1) The Board shall consist of—
 - (a) a Chairman;
 - (b) a representative of the Ministry of Finance; and
 - (c) not more than 10 persons of whom at least—
 - (i) 2 persons shall represent the public sector;
 - (ii) 2 persons shall represent employers in the private sector;

- (iii) 2 persons shall represent workers.
- (2) The Members of the Board shall be appointed by the President for a term of three years or such shorter period as the President may determine and shall be eligible for reappointment.
- (3) If a Member of the Board appointed under subsection (1)(c) (i), (ii) or (iii) ceases in the opinion of the President to represent the public sector, employers in the private sector or workers, as the case may be, the President shall appoint another person to replace that member.
- (4) The Board shall appoint a Secretary of the Board who, in addition to any other duties assigned to the Secretary, shall be responsible for convening all meetings of the Board, the proper recording of its decisions and communication of those decisions to those who are required to act on them.
- (5) The Secretary of the Board shall publish a notice of every appointment under this section in the *Official Gazette*.

7. Eligibility for appointment

No person shall be appointed as a Member of the Board if that person—

- (a) has been convicted of an offence which materially affects his or her character or credibility whether in Seychelles or elsewhere;
[paragraph (a) amended by section 2(d)(i) of [Act 13 of 2018](#)]
- (b) is insolvent or has been declared bankrupt whether in Seychelles or elsewhere;
- (c) is mentally or physically incapable of carrying out the person's function.
[paragraph (c) amended by section 2(d)(ii) of [Act 13 of 2018](#)]

8. Disqualification, removal etc of Board Member

- (1) Where a member of the Board of Trustees, at any time after his appointment -
 - (a) becomes disqualified under section [6\(3\)](#) or [7](#);
 - (b) has been absent without good cause from three or more successive meetings of the Board during a period of twelve months; or
 - (c) is convicted of an offence or is found to have committed an act of misconduct in the office which substantially prejudices the interests of the Fund,the President shall remove such member.
- (2) No member of the Board shall be removed from office on any ground other than those specified in this section.

9. Reports of the Board

The Board shall make half-yearly reports on the administration of the Fund to the Minister and furnish such other reports as the Minister may require.

10. Board meetings

- (1) The Board shall meet at such intervals as it may determine provided that at least twelve meetings shall be held in a year.
- (2) Seven members shall constitute a quorum at a meeting.
- (3) The Chairman may by notice convene a special meeting of the Board for any purpose specified in the notice.

- (4) The Chairman or, in his or her absence, a member of the Board, other than the Chief Executive Officer or the Secretary, nominated by the Chairman, shall preside at meetings of the Board.

[subsection (4) substituted by section 2(e) of [Act 13 of 2018](#)]

- (5) The Chief Executive Officer shall attend all meetings of the Board and except when he presides at a meeting of the Board under subsection (4) shall not vote at the meetings of the Board.
- (6) Decisions of the Board shall be taken by the vote of a simple majority of Members present at a meeting and in the event of an equality of votes on any matter before the Board the Chairman, or the Chief Executive Officer when he is presiding, shall have a casting vote.
- (7) The proceedings of the Board shall be confidential unless the Board decides otherwise.

11. Remuneration of Board Members

Members of the Board shall be paid such allowances and the Chief Executive Officer such a salary as may be determined by the Minister.

12. Confidentiality

A Member of the Board or an employee of the Fund shall not disclose to any person information relating to the affairs of the Fund which is acquired in the performance of his duties except for the purpose of the performance of his duties or when ordered by the Court.

13. Disclosure of interest

- (1) If a Member of the Board or a close relation of the member is in any way directly or indirectly interested in a matter coming up for decision by the Board, the Member shall disclose the nature of such interest to the Board and shall not take part in any deliberations or decisions of the Board on that matter.
- (2) A Member of the Board who knowingly contravenes subsection (1) shall be liable to be removed from office.

14. Resignation of Member

A Member of the Board may resign his office by letter addressed to the President. The Chairman and the Chief Executive Officer shall give three months' prior notice and any other Member shall give not less than one month's prior notice of his resignation.

Part IV – Management of the Fund

15. Responsibilities of the Chief Executive Officer

The President shall appoint a Chief Executive Officer of the Fund who shall, subject to this Act and decisions of the Board, be responsible for the day to day administration of the Fund, including —

- (a) the collection of contributions;
- (b) the payment of pensions and other benefits;
- (c) the investment of surplus moneys of the Fund; and
- (d) the accounting for all moneys collected, paid or invested under this Act.

16. Employment of staff

The Fund may employ such staff as may be necessary for the administration of the Fund on such terms and conditions as it may determine.

Part V – Membership of the Fund and contributions

17. Membership of the Fund

- (1) Every worker who is a citizen of Seychelles shall be a member of the Fund.
- (2) A self-employed person or other person who is a citizen of Seychelles may on application to the Chief Executive Officer in the prescribed manner become a member of the Fund.

18. Contributions to the Fund

- (1) In respect of every worker, there shall be paid into the Fund by the worker's employer for each month or part of a month in which the worker is employed such sum as may be prescribed.
- (2) Every worker shall pay into the Fund for each month or part of a month in which the worker is employed such sum as may be prescribed.
- (3) Every self-employed person or other person who becomes a member of the Fund shall pay into the Fund as contribution a sum not less than the prescribed sum on each occasion on which the person makes such payment.
- (4) Any worker or self employed person may pay into the Fund as voluntary contribution such sum as he may, in the prescribed manner, elect either as a lump sum or as a periodic contribution or as a monthly sum.
- (4A) Where a member who has paid contribution for a period of not less than 5 years ceases to reside in Seychelles, the member may continue to pay the mandatory contribution and the voluntary contribution or either of them.

[subsection (4A) inserted by section 2(a) of [Act 3 of 2007](#)]

- (5) Nothing in subsection (1) shall prevent an employer from paying into the Fund under that subsection in respect of a worker a sum in excess of the prescribed sum referred to in that subsection.
- (6) A member's voluntary contribution shall bear interest at such rate as the Minister shall determine in writing upon the recommendation of the Board.
- (7) A member who has taken his or her retirement shall not make any further contribution to the Fund.

[subsection (7) added by section 2(f) of [Act 13 of 2018](#)]

19. Transfer of part of social security contributions

- (1) The Minister may order that a specified percentage of the contributions collected under section 3 of the Social Security Act and Regulation 5 of the Social Security Contributions Regulations be paid to the Fund on or before the 30th day of the month following the month in which they are collected.
- (2) The Chief Executive Officer shall credit the amount so paid to a general account of the Fund.

20. Cessation of contributions

- (1) Contributions to the Fund by or in respect of any member shall cease to be paid—
 - (a) when the member ceases to be employed;

- (b) when the member retires; or

[paragraph (b) substituted by section 2(g)(i) of [Act 13 of 2018](#)]

- (c) on the death of the member,

except in respect of contributions due before the occurrence of any of those events.

- (2) Where a member ceases to be employed, the member may continue to pay the mandatory contribution and the voluntary contribution or either of them for a period not exceeding 5 years before resuming employment.

[subsection (2) substituted by section 2(b) of [Act 3 of 2007](#) and amended by section 2(g)(ii) of [Act 13 of 2018](#)]

21. When contributions are due and payable

- (1) The contribution payable under this Act for each month by an employer in respect of a worker shall be due at the time of payment of his wages for that month or where wages are paid at periods shorter than a month on the date of the last payment of wages in that month.

- (2) Contributions due under subsection (1) for each month shall be payable to the Fund by the employer on or before the 21st day of the following month.

[subsection (2) amended by section 2(b) of [Act 21 of 2010](#)]

- (3) Contributions payable under this Act by a worker who has elected to make contributions under [section 18\(4\)](#) may, except where he has authorised the deduction of the contribution from his wages, be paid at any time by the worker or self employed person.

- (4) Where a worker has elected to pay any monthly contribution under [section 18\(4\)](#) as a deduction from his wages the contribution shall be due on the date on which the wages for any month are paid or where the wages are paid at periods shorter than a month on the date of the last payment of wages for that month.

- (5) Any sum due under subsection (4) shall be deducted from the wages from which it is due at the time of payment of the wages and shall be paid to the Fund by the employer on or before the 21st day of the month following the month in which it is deducted.

[subsection (5) amended by section 2(b) of [Act 21 of 2010](#)]

22. Contributions deducted to be held for the Fund

Any sum deducted by an employer under [section 21](#) shall be held by the employer for and on behalf of the Fund and, notwithstanding any other written law, shall not be subject to attachment in respect of any debt or liability of the employer, and in the event of any liquidation, assignment or bankruptcy of the employer, the sum deducted shall be paid in full to the Fund before any distribution is made in the liquidation, assignment or bankruptcy.

23. Late payment and non-payment of contributions

- (1) If any contributions payable under [section 21\(2\)](#) and (5) remains unpaid after the time when it becomes payable, a surcharge at the prescribed rate shall be payable on the amount of contributions unpaid.

- (2) The surcharge under subsection (1) shall, when paid or recovered, be credited to the general account in the Fund.

[subsection (2) substituted by section 2(h) of [Act 13 of 2018](#)]

- (3) Where any contribution payable by an employer in respect of a member under [sections 21\(1\) and \(2\)](#) remains unpaid on the date on which the contributions are payable under those subsections, the Chief Executive Officer shall credit the account in the Fund of the member as soon as the employer pays such contributions or upon recovery thereof from the employer.

24. Contributions and surcharge

- (1) Contribution and any surcharge thereon when they become payable shall be a debt due to the Fund and shall be payable to the Fund by the person liable to pay them at the time specified in [section 21](#).
- (2) The Board may waive any contributions or surcharge if the Board is satisfied that all reasonable efforts have been made by the Chief Executive Officer to collect or recover payment of the contribution or surcharge as the case may be.

25. Security on contribution

Where the Chief Executive Officer has reason to believe that an employer may not be able to pay the employer's contribution to the Fund as a result of indebtedness or otherwise, he may require the employer to provide a security in the form of a cash or bank guarantee not exceeding the total of the employer's and workers' monthly contributions for 3 months.

26. Action for recovery of sum due to the Fund

- (1) Notwithstanding article 2271 of the Civil Code or any other written law, an action for the recovery of any sum due to the Fund may be instituted at any time within six years from the date when it became payable.
- (2) In any such action, a certificate under the hand of the Chief Executive Officer or any document certified by him to be a copy of or extract from any record or book kept under this Act shall be *prima facie* evidence of the contents of the certificate or document as the case may be.

27. Employer liable for contributions leaving Seychelles

- (1) Where the Chief Executive Officer has reason to believe that an employer liable to pay any contribution or any surcharge thereon is likely to leave Seychelles before the date on which the contribution or surcharge is due and payable, without intending to pay the contribution or surcharge, the contribution or surcharge shall be payable on such date as the Chief Executive Officer notifies to that employer.
- (2) The Chief Executive Officer may, in the case of an employer referred to in subsection (1) who has not paid the contribution or surcharge on the date notified, apply to the Supreme Court for an order directing the employer not to leave Seychelles until he pays the contribution or surcharge.
- (3) The Chief Executive Officer shall on obtaining a Court order notify the Commissioner of Police or the Director General of Immigration or both to prevent the employer from leaving Seychelles without paying the contribution or surcharge or furnishing security to the satisfaction of the Chief Executive Officer for the payment of the contribution or surcharge.
- (4) The Commissioner of Police or the Director General of Immigration or both shall on receipt of any such order take or cause to be taken by any police officer or immigration officer such measures as may be necessary to prevent the employer named in such order from leaving Seychelles until the payment of the contribution or surcharge has been made or secured as aforesaid, including the use of such force as may be necessary and the seizure, removal or retention of any passport, certificate of identity or other travel document relating to such person and of any exit permit or other document authorising such person to leave Seychelles.
- (5) The production to an immigration officer or to a police officer in charge of a police station of a certificate signed by the Chief Executive Officer stating that the contribution or surcharge has been paid or that security has been furnished for payment of the contribution or surcharge shall,

subject to all immigration, customs or other requirements being fulfilled, be sufficient authority for allowing such person to leave Seychelles.

- (6) No civil or criminal proceedings shall be instituted or maintained against the Government, the Chief Executive Officer, the Commissioner of Police, the Director General of Immigration or any other police officer or immigration officer in respect of anything lawfully done under the authority of this section.
- (7) Every air line or shipping company or agent thereof shall, if so requested by the Chief Executive Officer, furnish him with a list of all passengers due to leave Seychelles by air or by sea, as the case may be, on tickets issued by or through that company or agent.

28. Member's account and interest

- (1) There shall be opened and maintained for each member of the Fund an account in the Fund identified by the national identity number of the member which account shall be credited with all mandatory contributions and voluntary contributions paid to the Fund by or in respect of the member.
- (2) Subject to subsection (3), interest shall be paid on —
 - (i) the voluntary contribution in the member's account with the Fund on or before the 30th March of the succeeding financial year;
 - (ii) on the mandatory and voluntary contributions at the time of payment of pre-retirement death gratuity or migration allowance; and
 - (iii) on the refund of contributions, where a member has not contributed the monthly mandatory contribution continuously for a minimum period of 10 years upon retirement or an aggregate of 20 years contributions and does not qualify for a retirement pension.

[paragraph (iii) amended by section 2(i) of [Act 13 of 2018](#)]
- (3) The rate of interest payable shall be determined by the Minister upon the recommendation of the Board and a notice thereof shall be published in the official gazette.

29. Sums in account and pension etc., not to be assigned

Notwithstanding any other written law, but subject to [section 44](#), any sum standing to the credit of a member in his account in the Fund shall not be subject to attachment in respect of any debt or liability of the member and upon the bankruptcy or insolvency of a member that sum or any benefits including pension or gratuity granted under this Act shall not be assignable or transferable or liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever.

29A.

A member shall be provided with—

- (a) a statement of the member's contributions to the Fund in addition to the annual statement sent to each member; and
- (b) a copy of the auditor's report, statement of income and expenditure and the balance sheet of the Fund published under [section 54](#), if the member requests them.

[section 29A inserted by section 2(c) of [Act 21 of 2010](#)]

Part VI – Benefits

30. Benefits

Benefits payable to or in respect of members under this Act shall be—

- (a) a monthly retirement pension for life;
- (b) pre-retirement death gratuity;
- (c) post-retirement death gratuity;
- (d) migration allowance;
- (e) permanent incapacity pension;
- (f) surviving spouse's pension;
- (g) children's pension;
- (h) withdrawal of voluntary contributions on retirement.

31. Monthly retirement pension

- (1) Subject to subsections (2) and (3), a member shall be entitled to receive as a benefit a retirement pension for life upon retirement or an incapacity pension for life or for a specific period in accordance with regulations.

[subsection (1) amended by section 2(j) of [Act 13 of 2018](#)]

- (2) A person who holds an office the terms and conditions of which under the relevant laws other than under the Pensions Act, Teacher's Pension Act or Police Force Act, entitle him to a retirement pension shall not be entitled to a retirement pension under this Act.
- (3) The various benefits to which a self employed person or other person is entitled shall be prescribed by regulations.

32. Rates of pension

The rates of monthly pensions payable shall be prescribed by regulations. The regulations shall also prescribe circumstances in which a retirement pension may be varied.

33. Qualifying period for pension

- (1) A person is entitled to a retirement pension or an incapacity pension only if the person has a minimum of 10 years of continuous contribution to the Social Security Fund or a minimum of 10 years continuous mandatory contribution to the Seychelles Pension Scheme after the Seychelles Pension Scheme came into operation on 1st January 1991 or the Seychelles Pension Fund, immediately prior to retirement or an aggregate period of 20 years of contribution to either the Social Security Fund or the Seychelles Pension Fund prior to retirement.
- (2) In respect of a surviving spouse's pension and children's pension, the deceased spouse and parent must have had a minimum period of 10 years of continuous contributions to the Social Security Fund or a minimum of 10 years of continuous mandatory contribution to the Seychelles Pension Scheme since the Seychelles Pension Scheme came into operation on 1st January 1991 or to the Seychelles Pension Fund immediately prior to the death of the deceased spouse or an aggregate of 20 years contributions to the Social Security Fund or the Seychelles Pension Fund prior to the death of the deceased spouse.

34. Pre-retirement death gratuity

- (1) Where a member dies before retirement leaving no surviving spouse or children or his spouse is not living with him at the time of his death, his dependant or, if he has nominated in the prescribed manner any dependant or other person, that dependant or other person shall be entitled to receive as a benefit a pre-retirement death gratuity equivalent to the sum, if any, standing to his credit in the Fund at the time of his death.

[subsection (1) amended by section 2(k)(i) of [Act 13 of 2018](#)]

- (2) Where a member dies before retirement and is not qualified for a pension under [section 33](#), his spouse or if he has no spouse, his nominated beneficiary or if he had not made any nomination the dependant and in the absence of any dependant the heirs shall be entitled to a pre-retirement death gratuity equivalent to the sum, if any, standing to his credit in the Fund at the time of his death.

[subsection (2) amended by section 2(k)(ii) of [Act 13 of 2018](#)]

35. Post-retirement death gratuity

- (1) Where a person who is receiving a retirement pension dies, his surviving spouse or dependant shall be entitled to receive a post-retirement death gratuity as provided by regulations if the surviving spouse or dependant does not qualify for the benefit under [section 37](#).

[subsection (1), previously unnumbered, numbered by section 2(l) of [Act 13 of 2018](#)]

- (2) Subject to subsection (3), where a member who is receiving a retirement pension dies and leaves behind, other than a spouse, a dependent person with severe disabilities as certified by the Medical Board, the dependent may claim a pension equivalent to 40% of the member's pension.

[subsection (2) added by section 2(l) of [Act 13 of 2018](#)]

- (3) The claim shall be accompanied by an affidavit establishing the dependency sworn, affirmed or solemnly declared by the dependent or by the dependent's guardian or custodian.

[subsection (3) added by section 2(l) of [Act 13 of 2018](#)]

36. Pre-retirement surviving spouse's pension

Where a member dies before reaching the retirement age, his surviving spouse who is living with him at the time of his death shall be entitled to receive a surviving spouse's pension and the refund of the member's voluntary contributions, if any, standing to his credit in the Fund with interest as prescribed by regulations.

37. Post-retirement surviving spouse's pension and children's pension

- (1) Subject to subsection (2), where a member dies after retirement his spouse or children living with him at the time of his death may be granted a pension.

[subsection (1) amended by section 2(c) of [Act 3 of 2007](#)]

- (2) Subsection (1) shall come into force after provision is made by regulations for the post retirement spouse's pension or children's pension and such regulations may require an additional contribution to the Fund to have been made by a member who wishes his spouse or children to receive such pension.

38. Children's pension

- (1) Where a member dies before retirement and has no surviving spouse, his children shall be entitled to receive a children's pension and the voluntary contributions if any standing to his credit in the Fund with interest as prescribed by regulations.

[subsection (1) amended by section 2(m) of [Act 13 of 2018](#)]

- (2) For the purpose of this section, 'children' includes children from a previous marriage or relationship that the member was maintaining before his death.
- (3) When more than one person is entitled to a benefit under subsection (1), the sum due as benefit shall be divided equally among those persons.

39. Migration allowance

Where a member satisfies the Chief Executive Officer that he has migrated or is about to migrate from Seychelles to another country as a permanent resident of that country before retirement, he shall be entitled to a migration allowance equal to the total amount standing to his credit in the Fund.

[section 39 amended by section 2(n) of [Act 13 of 2018](#)]

40. Permanent incapacity pension

- (1) Where a member who has not taken retirement is certified by the Medical Board established under this Act to be totally incapacitated, he shall be paid a permanent incapacity pension for life or for such period of time as the Chief Executive Officer may determine.

[subsection (1) amended by section 2(o)(i) of [Act 13 of 2018](#)]

- (2) The conditions which a member must fulfil to qualify for a permanent incapacity pension for life or for a specific period shall be prescribed by regulations.
- (3) If the Chief Executive Officer has reason to believe that a person in receipt of a pension under this section is no longer incapacitated, the Chief Executive Officer may request the Medical Board to review the case and make its recommendation.
- (4) A member who is in receipt of a permanent incapacity pension for life shall not be eligible to receive a monthly pension.

[subsection (4) amended by section 2(o)(ii) of [Act 13 of 2018](#)]

- (5) Where a member who is receiving a retirement pension dies and leaves behind other than the spouse a dependent with severe disabilities certified by the Medical Board established under this Act may claim for a pension of 40% of the member's pension provided that a sworn affidavit by the dependant or by his or her guardian regarding the dependency shall be furnished with the claim.

[subsection (5) added by section 2(o)(iii) of [Act 13 of 2018](#)]

41. Application of retirement and invalidity pensions

Any person who would have qualified for a benefit under [section 33](#) but retired on attaining the age of 63 or was granted a retirement benefit or incapacity benefit in a lump sum under the Pension Scheme during the year 2005 shall be entitled to receive the pension prescribed by regulations as if the person retired on 1st January 2006 on coming into force of this Act.

42. Members not qualifying for pension

- (1) A member who does not qualify for a retirement pension under [section 33](#) shall be refunded his contributions to the Fund with interest in a lump sum upon retirement.

[subsection (1) amended by section 2(p) of [Act 13 of 2018](#)]

- (2) Subject to section 25 of the Social Security Act and the payment of contributions referred to in [section 19](#) of this Act, the Minister may direct that the Social Security retirement pension of members as retired employees be paid by the Fund.

43. Refund of voluntary contributions by lump sum on retirement

- (1) A member shall be entitled to receive his voluntary contributions, if any, standing to his credit in the Fund on approval of his retirement pension or incapacity pension.
- (2) A member may elect in writing to have the member's voluntary contribution to be used to increase his monthly pension on retirement.
- (3) A member who has been certified by the Medical Board to be terminally ill may apply for a full refund of either or both mandatory or voluntary contributions with interest standing in the account of the member.

[subsection (3) added by section 2(q) of [Act 13 of 2018](#)]

- (4) A member who has received a full refund of his or her mandatory contribution under subsection (3) shall not be eligible to claim a monthly retirement pension or incapacity pension.

[subsection (4) added by section 2(q) of [Act 13 of 2018](#)]

- (5) A member may upon attaining the age of 55 years elect to receive his or her voluntary contribution entirely or partially by way of a lump sum.

[subsection (5) added by section 2(q) of [Act 13 of 2018](#)]

44. Contributions as security

Notwithstanding [section 29](#), the voluntary contributions paid by a member standing to his credit in the Fund under [section 18](#)(4) and (5) may be used with the consent of the Chief Executive Officer as security to enable the member to obtain a housing loan or a loan for medical treatment.

45. Rejoining the Fund

Where a person who had migrated to another country having received his migration allowance later returns to Seychelles permanently, the person may rejoin the Fund.

46. Pension review

- (1) The Minister may upon the recommendation of the Board review periodically the rates of pensions.
- (2) The review shall take into consideration the percentage increase in the retail price index for the preceding period of twelve months up to a maximum of 5 per cent.

Part VII – Financial provisions and investment

47. Pension Fund

- (1) The Seychelles Pension Fund shall consist of—
 - (a) contributions paid, received or recovered under this Act;
 - (b) contributions received under [section 18](#) of this Act;
 - (c) surcharges, fines or penalties imposed by the Fund or ordered by the Court;
 - (d) all moneys collected and accounted under the Seychelles Pensions Scheme as at 31st December, 2005;
 - (e) grants and donations; and
 - (f) all investments and bank accounts owned by the Fund and income, interest, rent, profits and earnings generated or losses incurred by the investments.
- (2) There shall be paid out of the Fund—
 - (a) all benefits under this Act;
 - (b) all allowable expenses incurred.
- (3) For the purpose of this section “allowable expenses” means expenses incurred in the administration, operation, record keeping, investment of the Fund, expenses of the Board including remuneration and training of Members of the Board and such other expenses properly incurred by the Board.

[section 47 substituted by section 2(r) of [Act 13 of 2018](#)]

48. Budget

The budget of the Fund in respect of a financial year shall be determined by the Board before the 15th day of December of the preceding financial year.

49. Financial year

The financial year of the Fund shall be the period of twelve months ending on the 31st day of December.

50. Investment

- (1) The funds of the Fund which are not required for the time being for the purpose of the Fund shall be invested with the approval of the Board in such type and class of international or domestic investment, at specific levels and at such frequency consistent with the Pension Fund Investment Policy undersection 51.
- (2) The Board shall not make an investment unless—
 - (a) it has obtained and considered advice from independent persons having expertise in the relevant field into which investment is to be made; or
 - (b) the investment is in line with the Investment Policy under [section 51](#).

[section 50 substituted by section 2(s) of [Act 13 of 2018](#)]

51. Investment policy

- (1) The Board shall prepare, maintain and from time to time revise, an Investment Policy for investment by the Fund, which shall include—
 - (a) the kinds of allowable and prohibited investments;
 - (b) allowable limits and range of permissible investment defined by the Board;
 - (c) allowable risks defined by the Board;
 - (d) the expected return on investments; and
 - (e) such other matters as maybe relevant.

[section 51 substituted by section 2(t) of [Act 13 of 2018](#)]

52. ***

[section 52 repealed by section 2(u) of [Act 13 of 2018](#)]

53. Accounts and Audit

- (1) The Board shall cause to be kept proper accounts of the Fund and all other books and records in which it shall record all its financial transactions.
- (2) The Board shall create, maintain and ensure adequate back-up of an electronic recordkeeping database of records and transactions of all employers, contributors, pensioners, survivors and other eligible recipients.
- (3) There shall be appointed by the Board on the recommendation of the Audit Committee a head of internal audit who shall report to the Audit Committee.
- (4) The accounts of the Fund shall be audited by the Auditor General in accordance with Article 158 of the Constitution.
- (5) The Board shall prepare within 3 months following every financial year of the Fund an annual report of its activities and submit a copy of the report and the statement of accounts audited under subsection (3) to the Minister and the Minister shall cause the same to be tabled before the National Assembly.
- (6) The Board may make available a copy of the report and audited statement of account on the Pension Fund's website.

[section 53 substituted by section 2(v) of [Act 13 of 2018](#)]

54. ***

[section 54 repealed by section 2(w) of [Act 13 of 2018](#)]

55. Actuarial investigation of the Fund

- (1) The Board shall at intervals of not more than 3 years conduct an actuarial investigation of the assets and liabilities of the Fund by an approved actuary.
- (2) Notwithstanding subsection (1) the Board may at any time conduct actuarial investigations to evaluate parametric changes.
- (3) For the purpose of this section—
 - (a) “approved actuary” means an actuary who is a credentialed member or fellow of the International Association of Actuaries appointed by the Board; and

- (b) “parametric changes” includes—
- (i) an increase or decrease in the pension indexation formula or the index cap;
 - (ii) an increase or decrease in the rates of employer or employee contributions;
 - (iii) an increase or decrease in the amount of the maximum or minimum pensionable salary;
 - (iv) an increase or decrease in the amount of the maximum or minimum pension;
 - (v) a change to the eligibility rules for the maximum or minimum pension amount;
 - (vi) an adjustment to the pension formula used to calculate each pensioner's lifetime benefit;
 - (vii) an increase or decrease in early or normal retirement age;
 - (viii) a substantial decrease of the Pension Fund investment gains or investment losses used in the previous actuarial valuation;
 - (ix) a substantial increase of the Pension Fund allowable expenses under [section 47](#) used in the previous actuarial valuation;
 - (x) an extension of or removal from pension coverage for defined groups of employees; and
 - (xi) any other measure that would impact the actuarial equilibrium.

[section 55 substituted by section 2(x) of [Act 13 of 2018](#)]

Part VIII – Medical Board

56. Appointment etc. of Medical Board

- (1) A Medical Board shall be appointed for the purpose of advising the Fund on applications for permanent incapacity pensions under [section 40](#) and any other matter referred to it.
- (2) The Medical Board shall consist of at least four medical practitioners who shall be appointed by the Board.
- (3) The Board shall appoint a member of the Medical Board to be its Chairman.
- (4) The quorum of the Medical Board shall be three.
- (5) The members of the Medical Board shall hold office on such terms and conditions as the Board may determine.
- (6) There is established an Appeals Committee of the Medical Board comprising three members appointed by the Board to hear and determine appeals from the Medical Board.

[subsection (6) added by section 2(y) of [Act 13 of 2018](#)]

- (7) The members of the Appeals Committee shall hold office on such terms and conditions as the Board may determine.

[subsection (7) added by section 2(y) of [Act 13 of 2018](#)]

- (8) A member aggrieved by a decision of the Medical Board may appeal to the Appeals Committee of the Medical Board.

[subsection (8) added by section 2(y) of [Act 13 of 2018](#)]

Part IX – Obligations and offences

57. Obligation of employers to furnish records etc.

The Chief Executive Officer or any person authorised by him in writing may require any employer to provide him monthly or when required with the books of account, registers or other documents concerning the employees or their employer or answer such questions as he may put to the employer.

58. Social security records

The Director of the Social Security Fund shall make any record of the Social Security Fund available to the Chief Executive Officer or a person authorised by the Chief Executive Officer for examination for the purpose of this Act.

59. Unlawful claim or receipts of benefit

- (1) Any person who claims or receives a benefit knowing that the person is not qualified to receive the benefit under this Act is guilty of an offence.
- (2) A Court may, in addition to any sentence it may pass in respect of an offence under subsection (1), direct a person convicted of receiving a benefit referred to in that subsection to pay to the Fund the sum received.

60. Non-disclosure of information

No person who, in his capacity as Chief Executive Officer or an employee of the Fund, has acquired any information relating to the account of a member of the Fund shall disclose such information except —

- (a) to the member or any other person receiving a benefit in respect of the member;
- (b) for the purpose of the performance of the person's duties; or
- (c) when required to make such disclosure by any Court.

61. Power of entry

- (1) The Chief Executive Officer may authorise any employee of the Fund to exercise any of the powers and responsibilities of the Chief Executive Officer.
- (2) A person authorised under this section may, where he has reason to believe that any provision of this Act is being contravened by any person enter any premises of such person, call for and examine any records and take copies or extracts thereof.
- (3) A person authorised under subsection (1) shall, if so requested, produce his authority to exercise powers under this section.

62. Offences and penalties

- (1) Any person who—
 - (a) fails to pay any contribution and surcharge due from him in the manner and within the time specified under this Act;
 - (b) fails to furnish any salary return or information relating to his employment when required;
 - (c) contravenes any other provision of this Act or fails to comply with any requirement communicated by the Chief Executive Officer under this Act;

- (d) knowing that a direction has been issued under [section 27](#) for the prevention of his departure from Seychelles leaves or attempts to leave Seychelles;
 - (e) discloses information in contravention of [section 60](#);
 - (f) knowingly makes any false statement or produces or furnishes or causes or allows to be produced or furnished any document which he knows to be false;
 - (g) obstructs any officer or employee of the Fund in the discharge of his functions including entering any office premises or place of business for the inspection of employment records;
 - (h) acts as a sales agent without being appointed as such under [section 66](#), commits an offence.
- (2) Any person who is guilty of an offence under subsection (1) is liable to a fine of R10,000 and to imprisonment for six months.
 - (3) The Court shall, on conviction of an employer for failing to pay contributions, order the employer in addition to any other penalty under this section to pay to the Fund the amount of unpaid contributions together with any surcharge due on the amount at the time and the order of the court shall have the same force and effect as a judgment of the court in favour of the Fund.
 - (4) All sums collected under subsection (3) shall be paid to the Fund.

63. Employers' and management liability

Where an act or omission which constitutes an offence for which an employer is liable under this Act has in fact been committed or made by a manager, agent, servant or other person, the manager, agent, servant or other person shall be liable to be proceeded against for the offence in the same manner as if he were the employer, either together with the employer or before or after the conviction of the employer and shall be liable to the like punishment as if he were the employer.

64. Compounding of offences

- (1) The Chief Executive Officer may, at his discretion, compound any offence under this Act or any regulation made thereunder by accepting from a person who has committed the offence and admits that fact and agrees in writing to be dealt with under this section a sum not exceeding R5,000.
- (2) A sum of money received under subsection (1) shall be treated as if it were fine imposed by a court.
- (3) In any proceedings brought against a person for that offence it shall be a good defence if the person proves that the offence has been compounded under this section.

Part X – Miscellaneous

65. Private schemes

- (1) Nothing in this Act shall prevent an employer from operating, while complying with the provisions of this Act, or other law regulating the activity, a private pension scheme providing workers with benefits.
- (2) *[subsection (2) repealed by section 2(z) of [Act 13 of 2018](#)]*

66. Sales agents

The Board may appoint sales agents on such terms and conditions as may be determined by the Board for the purpose of promoting the Fund and encouraging self-employed persons to be members of the Fund.

67. Priority of claim under this Act

A claim against an employer in respect of any contribution payable under this Act shall have priority over all other claims.

68. Regulations

The Minister may on the recommendation of the Board make regulations for carrying into effect the purposes and provisions of this Act and without prejudice to the generality of the foregoing —

- (a) for the calculation of the amounts and the manner of payment of benefits under this Act;
- (b) for specifying the rates of contributions to be paid by employers and workers and the collection of contributions;
- (c) for granting loans to members against voluntary contributions standing to their credit in the Fund and the conditions applicable to such loans;
- (d) for the terms and conditions of the appointment of staff and sales agents;
- (e) for specifying ratios for investments under [section 50\(1\)](#).

69. Tax exemption

The Seychelles Pension Fund shall be exempt from stamp duty, business tax, trade tax, goods and services tax and all other taxes, fees and duties on its assets, documents, instruments, profits, operations and properties.

70. Application of certain Penal Code provisions

The Members of the Board and the staff of the Fund shall be deemed to be public officers for the purpose of sections 91 to 96 of the Penal Code.

71. Protection of acts done in good faith

A Member of the Board or an employee of the Fund shall not be liable for damages for anything done or omitted to be done in good faith in the discharge or purported discharge of his functions.

72. Repeal of Cap 220

- (1) The Seychelles Pension Scheme Act (Cap 220) is hereby repealed.
- (2) Notwithstanding subsection (1), all benefits due under the Seychelles Pension Scheme shall be administered and paid by the Fund under this Act.
- (3) Notwithstanding subsection (1), the period of ten years of payment of contribution by a member for qualifying for a pension shall be deemed to have commenced from the date the member started paying contributions to the Seychelles Pension Scheme under the repealed Act.
- (4) The officers and other employees of the Seychelles Pension Scheme in employment immediately before the repeal of the Seychelles Pension Scheme Act shall be deemed to be officers and employees of the Seychelles Pension Fund immediately after such repeal on conditions not less favourable than those subsisting immediately prior to the repeal.
- (5) All contracts, deeds, agreements and other instruments made by the Seychelles Pension Scheme which subsist or have effect immediately prior to repeal shall have effect against or in favour of the Fund as if the Fund had been a party thereto.
- (6) All acts done, decisions taken, authorisations or benefits granted by the Director or the Board of Trustees of the Seychelles Pension Scheme which were validly done, taken or granted under written

law or under and in accordance with the repealed Act shall continue to have effect in accordance with their terms or unless amended, annulled or withdrawn in accordance with the written law.

73. Repeal of Cap 140

- (1) The National Provident Fund Act is hereby repealed.
- (2) The funds remaining in the National Provident Fund immediately before the coming into operation of this Act shall stand transferred to the Seychelles Pension Fund.
- (3) Any person who satisfies the Chief Executive Officer that the person has not been refunded his contributions by the National Provident Fund shall be entitled to be paid such contributions by the Chief Executive Officer provided that a claim for such payment is submitted to the Chief Executive Officer no later than 31st March 2006.