



Republic of the Philippines
SOCIAL SECURITY SYSTEM

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CIRCULAR NO. 2018-007

TO : ALL EMPLOYERS

SUBJECT : GUIDELINES ON THE WARRANTS OF DISTRRAINT, LEVY, AND/OR GARNISHMENT

Pursuant to Section 22 (b) in relation to Section 4 (a) [1] of Republic Act No. 1161, as amended by Republic Act No. 8282, otherwise known as the Social Security Act of 1997 (SS Act), and in accordance with the Social Security Commission Resolution No. 310-Series of 2017 duly approved by the President of the Republic of the Philippines, through a Memorandum from the Executive Secretary (MFES) dated 24 January 2018, the following Guidelines are hereby issued:

I. POLICY

The contributions payable under the SS Act in cases where an employer refuses, neglects, or fails to pay the same shall be collected by the Social Security System (SSS) in the same manner as taxes are made collectible under Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997, as amended.

II. COVERAGE

These Guidelines shall cover all delinquent or non-compliant employers subject to compulsory SS coverage under Section 9 of the SS Act, who are under legal obligation to deduct and to remit both employee and employer shares of contributions' delinquency, penalties, including liability for damages, if any, against whom final assessment notices have been issued.

III. PURPOSE

These Guidelines aim to strengthen and complement existing policies with the adoption of a sound and uniform collection system through the summary and additional remedies of warrants of distraint, levy, and/or garnishment on properties of delinquent or non-compliant employers for collection of due and demandable social security contributions thereby enhancing the effectiveness and efficiency in the assessment, collection and enforcement capabilities of the SSS in keeping with its social and corporate goals.

IV. DEFINITION OF TERMS - As used in these Guidelines, the following terms shall mean, as follows:

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- A. **Social Security System (SSS)** – A corporate body created by the SS Act charged with the duty to implement and enforce its provisions and the rules and regulations promulgated by the SSC;
- B. **Social Security Commission (SSC)** – A governing body that directs and controls the SSS which has rule-making and adjudicatory functions, as well as other expressed and implied powers provided under the SS Act;
- C. **Contributions** – The amount due and demandable from the employer, including penalties for delayed and late payments, under the SS Act;

The penalty of three percent (3%) per month shall continue to run from the date the contribution falls due until fully paid;

- D. **Damages** – The amount assessed against an employer who misrepresents the true date of employment of an employee member or who remits to the SSS contributions which are less than those required in the SS Act or fails to remit any contributions due prior to the date of contingency, resulting in a reduction of benefits in accordance with Section 24 of the SS Act;
- E. **Assessment** – A written demand to pay unpaid contributions, penalty liabilities and damages, i.e. Preliminary Assessment Notice (PAN) and Final Assessment Notice before Seizure (FANS);
- F. **Final and Executory Assessment** – An assessment made by the SSS of contributions and damages under the SS Act shall become final and executory:
 - 1. Employer fails to comply with FANS and no written Protest is filed within the prescribed period;
 - 2. No petition is filed before the SSC within *fifteen (15) days* after receipt of the Notice of Resolution denying the Protest.

The assessment that has become final and executory bars the delinquent employer from disputing the assessment.

- G. **Warrant** – A legal document issued by duly authorized officials of the SSS or the SSC authorizing such person to carry out an action with legal force and effect.
- H. **Distrain** – It is the seizure of any goods, chattels or effects, shares of stocks, securities, debts and credits and other personal/movable properties.
 - 1. **Actual Distrain** - The seizure and taking of physical control and possession of personal/movable properties of the delinquent employer.
 - 2. **Constructive Distrain** - The act of listing down the personal/movable

properties of delinquent employer in the notice of constructive distraint directing the employer or any person having possession or control of such property/ies not to dispose the properties distrained without the express authority of the concerned SSS official.

It may be resorted to if the delinquent employer is retiring from any business, or is intending to leave the Philippines or to remove his property therefrom or to hide or conceal his property or to perform any act tending to obstruct the proceedings for collecting the contributions and damages due or which may be due from the delinquent employer.

- I. **Levy** – The seizure of real/immovable properties, any rights or interest thereto, of a delinquent employer;
- J. **Notice of Levy** – A written notice to levy real property addressed to the Provincial/City/Municipal Assessor in the case of untitled real properties, or to the Register of Deeds of the place where it is situated in case of titled real properties, for annotation of the same on the Tax Declaration or the Certificate of Title;
- K. **Garnishment** – A proceeding in the nature of an attachment by means of which monies, bank accounts and interests in and rights thereto, of the delinquent employer in the custody or control of a third person.

V. CONTRIBUTIONS, PENALTIES AND DAMAGES ASSESSMENT

- A. The following shall be presumed to be the monthly contributions payable by, and due from, the employer to the SSS for each of the unpaid month/s, to wit:
 1. The amount based on the last complete record of monthly contributions paid by the employer;
 2. The average of the monthly contributions paid during the past three (3) years as of the date of assessment; or
 3. The amount based on all records and documents available to the SSS.

The SSS shall not be barred from determining, computing and collecting the true and correct contributions due the SSS even after full payment, nor shall the employer be relieved of its liability under the SS Act.

- B. The delinquent employer shall also pay damages under Section 24 of the SS Act, equivalent to the difference between the amount of benefit to which the employee-member or his/her beneficiary is entitled had the proper contributions been remitted to the SSS and the amount payable on the basis of the contributions actually remitted. If the employee-member or his/her beneficiary is entitled to pension benefits, the damages shall be equivalent to the accumulated pension due as of the date of settlement of

the claim or to the five (5) years' pension whichever is higher, including dependents' pension.

VI. PROCEDURAL HIGHLIGHTS

A. ASSESSMENT

1. Letter of Authority (LOA) and Preliminary Assessment Notice (PAN)

The SSS Branch Office (BO)/Large Account Department (LAD) concerned, through its duly authorized Accounts Officer (AO), shall prepare and serve a Letter of Authority (LOA) and a Preliminary Assessment Notice (PAN) to the delinquent employer.

The PAN shows the amount of the contributions, penalties due, and damages, if any, and the period of delinquency.

2. Final Assessment Notice (Before Seizure)

a. If the delinquent employer fails to comply with the PAN *within fifteen (15) days* from receipt thereof, the BO/LAD concerned shall prepare and serve a Final Assessment Notice Before Seizure (FANS).

b. If the delinquent employer still fails to comply after the lapse of *fifteen (15) days* from receipt of the FANS, the assessment shall become final and executory.

c. The BO/LAD concerned shall forward the employer account, together with its recommendations, for the issuance of the appropriate warrant by the Division, Group, Sector Heads/PCEO, as the case may be.

B. PROTEST

The employer may protest or dispute the FANS by filing a written Request for Reconsideration or Request for Reconciliation to the issuing BO/LAD *within fifteen (15) days* from receipt of the FANS.

A Protest disputing a FANS shall be in the form of either a:

1. **Request for Reconsideration** seeking re-evaluation of an assessment on the basis of existing records without need of additional evidence;

2. **Request for Reconciliation** seeking re-evaluation of an assessment on the basis of newly discovered or additional evidence.

The concerned BO/LAD shall evaluate the Protest and forward the employer's account records together with its recommendation to the BO/LAD Division, Group, Sector Head/PCEO, as the case may be, for resolution.

The filing of a Protest shall interrupt the running of the period for the finality of the assessment.

C. RESOLUTION OF PROTEST

The BO/LAD Division, Group, Sector Head/PCEO shall evaluate the recommendations of the BO/LAD and resolve the Protest *within ten (10) days* from receipt thereof.

The BO/LAD Division, Group, Sector Head/PCEO shall issue Notice of Resolution which shall be forwarded to the concerned BO/LAD who shall ensure proper service of the same to the protesting employer *within five (5) days* from receipt thereof.

D. EFFECT OF DENIAL

In case the Protest is denied, the assessment shall become final and executory, and the appropriate warrant shall be issued.

E. WARRANTS OF DISTRAINT, LEVY, AND/OR GARNISHMENT

1. The warrant shall be issued by the concerned SSS officials based on the following amount of delinquencies:
 - a. BO/LAD Division Heads - Php 2,000,000.00 and below;
 - b. BO/LAD Group Heads - Php 2,000,000.01 to Php 5,000,000.00;
 - c. BO/LAD Sector Heads
or the PCEO - Php 5,000,000.01 and above.

The amount referred above pertains only to the contribution delinquency excluding penalties and damages.

The WDLG shall be valid for a period of *six (6) months* from date of issuance.

For valid reasons, the WDLG may be lifted by the issuing authority.

2. **Actual Distraint** shall be resorted to satisfy the contributions delinquency, penalties and damages, and the expenses of the distraint and the cost of the sale.
3. **Constructive Distraint** shall be effected by requiring the employer or any person having possession or control of such property to sign the notice covering the property distrainted and obligate himself to preserve the same intact and unaltered and not to dispose of the same in any manner whatsoever, without any authority.

In case the employer or the person having the possession and control of the property sought to be placed under constructive distraint refuses or fails to sign the notice herein referred to, the SSS Officer shall proceed to prepare a list of such property and, in the presence of *two (2) witnesses*, post a copy thereof in the premises where the property distrained is located, after which the said property shall be deemed to have been placed under constructive distraint.

4. Garnishment

Bank accounts shall be garnished by serving a warrant of garnishment upon the employer and upon the president, manager, treasurer or other responsible officer of the bank. Upon receipt of the warrant of garnishment, the bank shall turn over to the SSS so much of the bank accounts as may be sufficient to satisfy the contributions and damages due under the warrant.

5. Levy on Real Property

- a. Real property may be levied upon, before, simultaneously, or after the distraint of personal property belonging to the delinquent employer.
 - b. Levy shall be effected by annotating upon the Transfer Certificate of Title in the custody of the Register of Deeds or in case of untitled properties, by notifying the City/Municipal Assessor in custody of the Tax Declaration. At the same time, written notice of the levy shall be mailed to or served upon the delinquent employer.
 - c. In case the warrant of levy on real property is not issued before or simultaneously with the warrant of distraint on personal property, and the personal property of the delinquent employer is not sufficient to satisfy the contributions and damages, the SSS Officer shall, *within thirty (30) days* after execution of the distraint, proceed with the levy on the employer's real property. The BO/LAD Division, Group, Sector Head/PCEO, as the case may be, shall have the authority to lift such order of levy for valid reasons.
6. *Within ten (10) days* after service of the warrant, a Report of its execution shall be submitted by the SSS Officer to the issuing authority. A Consolidated Report by the SSS Officer may be required as often as necessary.
- 7. Sale of Property Distrained and Disposition of Proceeds**
- a. The SSS Officer shall post in not less than *two (2) public places* in the municipality or city where the distraint is made, a notification specifying the time and place of sale and the articles distrained. The

time of sale shall not be less than *twenty (20) days* after notice to the owner or possessor of the property as above specified and the publication or posting of such notice. A notice must be posted at the Office of the Mayor of the city or municipality in which the property is distrained.

- b. At the time and place fixed in such notice, the said SSS Officer shall sell the goods, chattels, or effects, or other personal property, including stocks and other securities so distrained, at public auction, to the highest bidder for cash, or through a duly licensed commodity or stock exchanges at his discretion.
- c. In the case of stocks and other securities, the SSS Officer making the sale shall execute a Bill of Sale which he shall deliver to the buyer, and a copy thereof furnished the corporation, company or association which issued the stocks or other securities. Upon receipt of the copy of the Bill of Sale, the corporation, company or association shall make the corresponding entry in its books, transfer the stocks or other securities sold in the name of the buyer, and issue, if required to do so, the corresponding certificates of stock or other securities.
- d. Any residue after the satisfaction of the contributions and damages, including expenses, shall be returned to the owner of the property sold.

The expenses chargeable upon each seizure and sale shall include only the actual expenses of securing and preserving the property pending the sale.

8. Release of Distrained or Levied Properties upon Payment Prior to Sale

The warrants issued shall be lifted and the properties distrained or levied shall be restored to the owner if the contributions delinquency, penalties and damages including expenses are paid to the SSS prior to the sale.

9. Purchase by the SSS of Distrained or Levied Properties

When the proceeds of the sale of the property under distraint or levy purchased by the SSS is less than the amount of the contributions delinquency, penalties and damages, SSS shall be entitled to a deficiency claim.

10. Advertisement and Sale

The SSS shall advertise the sale of the distrained or levied property/ies.

11. Redemption of Property Sold

Within one (1) year from the registration of the Certificate of Sale with the appropriate government offices, the delinquent employer, or any one for him, shall have the right of paying to SSS the amount of the assessed contribution delinquency, penalties, damages, and other expenses, together with interest on said purchase price at the rate of *twelve percent (12%) per annum* from the date of purchase to the date of redemption.

The SSS shall then pay to the purchaser the amount he/she paid during the sale. The purchaser shall, likewise, turn-over to the SSS the Certificate of Sale earlier issued. Thereafter, the SSS shall issue a Certificate of Redemption to the paying employer.

12. Forfeiture to SSS for Lack of Bidder

- a. In case there is no bidder for the property subject for sale, the SSS Officer conducting the sale shall declare the property forfeited to the SSS in satisfaction of the contributions delinquency, penalties, damages and expenses.
- b. *Within one (1) year* from the date of such forfeiture, the delinquent employer, or any one for him, may redeem said property by paying to the SSS the full amount of the contributions delinquency, penalties, damages and expenses, together with interest on said purchase price at the rate of *twelve percent (12%) per annum* from the date of purchase to the date of redemption.

13. Reportorial Requirements

The SSS shall submit to the Commission any report regarding the implementation of WDLG guidelines.

VII. EMPLOYER REMEDY

The employer, *within fifteen (15) days* from receipt of the Notice of Resolution denying the Protest, may file a formal petition to the SSC pursuant to Section 5 of the SS Act.

VIII. ADMINISTRATIVE SANCTIONS

Failure/Refusal of the SSS Officers charged or tasked to implement the warrants of distraint, levy and/or garnishment in accordance with the procedures and within the period prescribed herein, or any other provision under these Guidelines, may subject said person to appropriate administrative disciplinary sanctions, including dismissal from the service.

IX. SUPPLEMENTARY APPLICATION

The provisions of the Tax Reform Act, SSC Rules of Procedures, and the Rules of Court insofar as practicable shall be given supplementary application.

X. SEPARABILITY CLAUSE

In case any provision in this Circular shall be held invalid or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

XI. IMPLEMENTATION

To ensure a responsive social security system suitable to the needs of the people and the continued provision of meaningful protection to the members of the SSS and their beneficiaries, the SSC is hereby authorized to issue or provide implementing details, consistent with existing laws, rules and regulations and the approved Guidelines, on the following matters:

- (1) provide for extension of periods within which the SSS may issue assessment notices, resolve protests, issue warrants of distraint, levy, and/or garnishment, or when an employer may file protests, request for reconciliation, submit supporting documents, redeem properties sold, and for all other periods set in the approved Guidelines;
- (2) include a provision in the Guidelines that the appeal to the SSC by the delinquent employer shall not stay the execution of a warrant of distraint, levy, and/or garnishment unless otherwise duly enjoined by the SSC or any appropriate authority; and
- (3) issue other implementing details as may be necessary on the procedure for issuance of warrants of distraint, levy, and/or garnishment, advertisement of sale for distrained and/or levied properties, lifting of warrants, redemption of properties distrained or levied, valuation of distrained or levied properties to be sold, utilization of proceeds from the sale of such properties, and other matters necessary or integral to the implementation of the approved Guidelines.

The procedures and forms on the WDLG shall be issued *within thirty (30) days* from the approval of this Circular.

XII. EFFECTIVITY

This Circular shall be effective *fifteen (15) days* after its complete publication in a newspaper of general circulation and the submission of the required copies to the Office of the National Administrative Register (ONAR).

THE SOCIAL SECURITY COMMISSION



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JOSE GABRIEL M. LA VIÑA
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GONZALO T. DUQUE
Member

22 MAR 2018

Date

(Policy - Others)

