

Seychelles

## Employment Act

### Chapter 69

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Employment Act  
Contents

Part I – Preliminary ..... 1

    1. Short title ..... 1

    2. Interpretation ..... 1

    3. Republic bound ..... 3

    4. Application of Act, exemptions and restriction of jurisdiction of Court ..... 3

Part II – Employment Services Bureau and employment agencies ..... 3

    5. Employment Service Bureau ..... 3

    5A. Employers to notify Employment Services Bureau of vacancies ..... 4

    6. Employment agencies to be licenced ..... 4

    7. Licenced employment agency to be a body corporate ..... 4

    8. Register of applicants seeking employment through an employment agency ..... 4

    9. Register of vacancies ..... 4

    10. Fees ..... 5

    11. Employers to advertise vacancies in certain circumstances ..... 5

    12. Returns ..... 5

    13. Accounts ..... 5

    14. Rights of entry for examination and inquiry ..... 6

    15. Regulations in respect of employment agencies ..... 6

    16. Self-employed workers ..... 6

    17. Job card ..... 6

    17A. Prohibition of employment of Seychellois without job cards ..... 6

    18. Restriction on employment of non-Seychellois ..... 7

Part III – Contracts of employment ..... 7

    19. Contracts of employment ..... 7

    20. Contracts by minors ..... 7

    21. Written contracts generally ..... 8

    22. Contracts of employment (outer islands) ..... 8

    23. Detention of worker beyond period of outer island contract ..... 8

    24. \*\*\* ..... 9

    25. Contracts for casual work ..... 9

    26. Language of contracts ..... 9

Part IV – Trainees ..... 9

    27. Trainees ..... 9

    28. National Vocational Training Board ..... 9

29. Premiums from trainees prohibited .....	9
30. Allowances for trainees and young workers .....	10
31. Benefits .....	10
Part VA – Protection of wages .....	10
32. Payments of wages .....	10
33. Authorised deductions .....	10
34. Disposal of wages .....	11
35. Record of wage payments .....	11
36. Evidence of payment .....	11
37. Workers privileged creditors .....	11
38. Absconding employer .....	11
39. When wages not due .....	12
39A. Prohibition against deferment or reduction of wages .....	12
Part VB – Regulation of wages and conditions of employment .....	13
40. Regulations relating to wages and conditions of employment .....	13
41. Calculation of wages .....	13
42. Deduction for food or housing .....	14
43. Effect and enforcement of regulations .....	14
44. *** .....	14
45. Security for wages .....	14
46. Employment benefits .....	14
Part VI – Protection of employment .....	15
46A. Prevention of discrimination .....	15
46B. Harassment prohibited .....	15
46C. Thirteenth month pay .....	15
47. Restriction on termination of contracts .....	16
48. Restriction on lay-offs of workers .....	17
49. Variation on terms of employment .....	17
50. Termination of contracts upon change of ownership .....	17
51. Redundancy of workers .....	18
51A. Restriction on lay-off and redundancy of a Seychellois worker .....	18
Part VII – Discipline .....	18
52. Disciplinary offences .....	18
53. Disciplinary proceedings .....	19
53A. Drunkenness while at work, etc. ....	19

54. Disciplinary proceedings relating to criminal matters .....	19
55. Disciplinary measures .....	19
56. Suspension .....	19
Part VIII – Termination of contracts .....	20
57. Termination by employer .....	20
58. Frustration of contracts .....	21
59. Period of notice by employer .....	21
60. Termination by worker .....	21
61. Grievance procedure .....	22
62. Compensation upon termination .....	23
62A. Compensation upon resignation or retirement .....	23
63. Payment in lieu of notice .....	23
63A. Interest payable .....	24
Part IX – Miscellaneous provisions .....	24
64. Disputes .....	24
65. Appeals and reviews .....	24
66. Retirement age .....	25
67. Non-Seychellois workers .....	25
68. Employer to keep register of workers .....	25
69. Certificate of employment .....	25
70. Probation .....	25
Section 70A. ....	25
71. Regulations .....	26
Part X – Administration .....	26
72. Responsibility for administration .....	26
72A. Tripartite consultative body .....	26
73. Employment Advisory Board .....	27
73A. Employment Tribunal .....	27
74. Competent offices and presumption of authority .....	27
75. Exercise of powers .....	27
Part XI – Offences, penalties and prosecution .....	28
76. Offences .....	28
77. Penalties .....	29
78. Prosecution .....	30
79. Determination of competent officer conclusive .....	30

80. Employer's liability for agents .....	30
Part XII – Transitional .....	30
81. Transitional .....	30
81A. Suspension of negotiation procedure .....	31
Schedule 1 (Sections 47, 48, 51) .....	31
Schedule 2 (Sections 52 and 55) .....	34
Schedule 3 (Section 73) .....	37
Schedule 4 (Section 28) .....	37
Schedule 5 (Section 2) .....	38
Schedule 6 (Section 73A) .....	41



# Seychelles

## Employment Act Chapter 69

Commenced on 3 April 1995

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*[Note: The original publication document is not available and this content could not be verified.]*

*[Amended by [Employment \(Amendment\) Act, 2020 \(Act 20 of 2020\)](#) on 1 June 2020]*

*[Amended by [Employment \(Amendment\) Act, 2021 \(Act 38 of 2021\)](#) on 16 September 2021]*

*[Act 2 of 1995; Act [8 of 1999](#); Act [4 of 2006](#); Act [21 of 2008](#); Act [18 of 2010](#); Act [24 of 2016](#); Act [20 of 2020](#); S.I 4 of 2011; [SI 52 of 2013](#); [SI 26 of 2015](#); [SI 16 of 2016](#); [SI 45 of 2016](#); [SI 74 of 2016](#); [SI 3 of 2017](#); [SI 13 of 2017](#); [SI 18 of 2018](#); [SI 20 of 2018](#); [SI 32 of 2018](#); [SI 36 of 2018](#); [SI 93 of 2018](#); [SI 34 of 2019](#); [SI 37 of 2019](#); [SI 38 of 2019](#); [SI 39 of 2019](#); [SI 26 of 2020](#); [SI 57 of 2020](#)]*

*[Note: Subsidiary legislation made under the repealed Employment Act continues in force under this Act (section 81).]*

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Employment Act.

#### 2. Interpretation

In this Act—

"**allowance**" means a wage payable to a trainee;

"**business**" means any trade, industry or commercial activity, service or any part thereof;

"**casual worker**" means a person, engaged by the day and from day to day who is paid on a daily basis and whose engagement by one and the same employer does not exceed 21 consecutive days customary in the business in which the worker is engaged;

"**Chief Executive**" means the person acting or discharging the functions of such office in the Ministry or, as the case may be, the Department responsible for the administration of this Act;

"**competent officer**" in relation to any matter under this Act means a person authorised by the Minister to act in respect of the matter and means also the Minister wherever the Minister thinks it fit to act in person in respect of any matter;

"**consecutive employment**" means employment by the same employer for a minimum of 24 hours, or, irrespective of the period of work, a minimum of 3 days, a week;

"**continuous employment**" means consecutive employment for an unlimited period;

"**domestic worker**" means any person serving in, or attached as a worker to, a private household;

"**employer**" means a person having a worker in the employ of that person or, where that person is absent from Seychelles, the accredited representative in Seychelles of that person, and, other than in Part III, means also the manager, agent or other responsible person acting on behalf of the employer;

"**employers' organisation**" means a trade union of employers registered under the Industrial Relations Act and includes a federation of such trade unions;

"**employment agency**" means the business of providing services for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them;

"**Employment Advisory Board**" means the board established by the Minister under [section 73](#);

"**Employment Service Bureau**" means the Employment Service Bureau established under [section 5](#);

"**fixed-term**", in relation to a contract of employment and subject to [section 19\(2\)](#), means a term exceeding 21 days the period of which is expressed by reference either to its duration in time or to the duration of a specific scheme or project or of specific works;

"**fixed-term contract**" means consecutive employment for a fixed term;

"**grievance procedure**" means the procedure laid down in Part II of Schedule 1;

"**harassment**" means any such unfriendly act, speech or gesture of one person towards another person that is based on the other person's age, gender, race, colour, nationality, language, religion, disability, HIV status, sexual orientation or political, trade union or other association, or otherwise, as would adversely affect the other person's dignity or make that person feel threatened, humiliated or embarrassed;

"**mandatory wage**" or "mandatory allowance" means the statutory mandatory wage or mandatory allowance, supplemented by any increment earned, prescribed in respect to the work, activity, or occupation in which a worker is engaged;

"**member**" means a member of the Employment Tribunal;

"**Minister**" means the Minister responsible for employment matters;

"**Ministry**" means the Ministry responsible for employment matters;

"**national minimum wage**" means the national minimum wage prescribed under [section 40\(2\)](#);

"**National Vocational Training Board**" means the Board established by [section 28](#);

"**Negotiation procedure**" means the procedure laid down in Part I of Schedule 1.

"**Outer island**" means an island listed as such in Schedule 5;

"**part-time worker**" means a worker other than a casual worker and other than a worker in continuous employment or engaged for a fixed term;

"**Piece work**" means work the pay for which is determined by the amount of work performed irrespective of the time occupied in its performance;

"**retirement age**" means the age at which a person qualified for a retirement pension under the Social Security Act;

"**Secretary**" means the Secretary to the Tribunal;

"**Seychelles ship or aircraft**" means a ship defined as a Seychelles ship in section 3 of the Merchant Shipping Act, or any aircraft registered in Seychelles under the Air Navigation (Overseas Territories) Order;

"**statutory**" in relation to "wage" or "allowance" means a wage or allowance prescribed under [section 40](#);

"**task**" means the amount of work mutually agreed between employer and worker as being within the worker's capacity in an ordinary working day;

"**trainee**" means a person referred to in [section 27](#);

"**Tribunal**" means the Employment Tribunal established under [section 73A](#);

"**Union**" in relation to a worker means a trade union registered under the Industrial Relations Act of which the worker is a member;

"**wages**" means the remuneration or earnings, however calculated, expressed in terms of money payable to a worker in respect to work done under the contract of employment of the worker but does not include payment for overtime work or other incidental purposes;

"**worker**" means a person of the age 15 years and above in employment in Seychelles or on a Seychelles ship or aircraft or employed in Seychelles for service in an agency of the Government or diplomatic mission of Seychelles abroad and a trainee;

"**young person**" means a person who is not less than 15 years and not more than 18 years of age;

### 3. Republic bound

Subject to [section 4\(2\)](#), this Act binds the Republic.

### 4. Application of Act, exemptions and restriction of jurisdiction of Court

- (1) Subject to subsection (2), this Act applies to—
  - (a) a contract of employment for service in Seychelles or on a Seychelles ship or aircraft;
  - (b) a contract of employment entered into a Seychelles for service in an agency of the Government or diplomatic mission of Seychelles abroad.
- (2) The Minister may, by order, exempt—
  - (a) any contract of employment;
  - (b) any person or category of persons;
  - (c) any business or occupation,from the operation of all or any of the provisions of this Act subject to such conditions as he thinks fit.
- (3) Where provision is made under this Act for the hearing and determination of any matter in relation to a contract of employment to which this Act applies, any remedy or relief granted under the Act in respect of that matter shall, subject to the supervisory jurisdiction of the Supreme Court conferred on that Court by article 125 of the Constitution, be binding on the parties to the hearing or determination.

## Part II – Employment Services Bureau and employment agencies

### 5. Employment Service Bureau

- (1) The Minister shall, within the Ministry, establish an Employment Services Bureau—
  - (a) to monitor the activities of the employment agencies;
  - (b) to collect and record all returns submitted by the employment agencies;
  - (c) to keep a register of unemployed Seychellois seeking employment, being persons who have not been in employment at any time;
  - (d) to keep a register of self-employed workers;
  - (e) to conduct research on the potentialities of the labour market in or outside Seychelles;
  - (f) to advise the Minister on matters relating to employment;
  - (g) where the Minister so directs, to be an employment agency.

- (2) Where the Minister directs the Employment Services Bureau to be an employment agency, the other provisions of this Part shall not apply to the Employment Services Bureau while carrying on an employment agency.
- (3) The Employment Services Bureau shall issue to each person registered under subsection (1)(c) a job card in such form as the Minister may direct.

#### **5A. Employers to notify Employment Services Bureau of vacancies**

An employer shall, whenever a vacancy occurs in the employer's establishment notify that fact, and when such vacancy is filled, the fact that it has been filled, to the Employment Services Bureau.

#### **6. Employment agencies to be licenced**

No person shall carry on any employment agency unless the person is the holder of a licence granted under the Licences Act to carry on such an agency.

#### **7. Licenced employment agency to be a body corporate**

An employment agency shall, on the grant of a licence to carry on such an agency, be a body corporate.

#### **8. Register of applicants seeking employment through an employment agency**

- (1) An employment agency shall keep a register in which it shall enter the particulars of all persons applying to the agency for the purpose of finding employment and specified in subsection (2).
- (2) There shall be entered in the register kept under subsection (1) the following particulars in relation to each person applying for the purpose of finding employment—
  - (a) the name, address, date of birth, nationality, the national identity number and the job card number (if any) of the person;
  - (b) particulars of skills or qualification held by the person;
  - (c) nature of employment sought by such person;
  - (d) particulars of any previous employment held by such person;
  - (e) any other prescribed particulars.

#### **9. Register of vacancies**

- (1) An employment Agency shall keep a register of vacancies in respect of employers who seek its services.
- (2) Any employer who seeks the services of an employment agency for supplying the employer with a worker for employment shall register with that agency which the employer may have.
- (3) An employment agency shall enter in the register of vacancies kept under subsection (1) the prescribed particulars in respect of each vacancy registered under subsection (2).
- (4) Where the employer registering a vacancy with an employment agency—
  - (a) requires the employment agency to advertise the vacancy, the employment agency shall in consultations with the employer advertise the vacancy in a local newspaper;
  - (b) does not require the employment agency to advertise the vacancy, the employment agency shall submit to the employer the names and the particulars of persons registered under [section 8](#) who are suitably qualified for the vacancy.

- (5) Where an employment agency has advertised a vacancy under subsection (4)(a), the employment agency shall, soon after the closing date for the submission of applications for the vacancy, submit to the employer the applications of persons who have responded to the advertisement together with the names and particulars of persons registered under [section 8](#) who are suitably qualified for the vacancy.
- (6) Where an employer has employed any person from among the persons whose names have been submitted by the employment agency under subsection (4)(b) or (5), the employer shall inform the agency the name, and such other particulars of the person employed as is required by the agency and forward the job card (if any) of that person to the Employment Services Bureau.
- (7) The employment agency shall enter in the register of vacancies the name and other particulars of any person in respect of whom information has been supplied under subsection (6).

## 10. Fees

- (1) An employment agency may charge such fees from an employer who seeks its service as may be agreed to between the employer and the agency.
- (2) An employment agency shall not demand or receive directly or indirectly any fee from any person seeking employment or for finding that person employment.

## 11. Employers to advertise vacancies in certain circumstances

- (1) An employer who does not seek the services of an employment agency for supplying the employer with a worker to fill any vacancy which the employer may have shall advertise the vacancy in a local newspaper or in such other manner as may be necessary to bring the vacancy to the notice of persons seeking employment.
- (2) Where an employer fills a vacancy pursuant to an advertisement under subsection (1), the employer shall submit to the Employment Services Bureau within 15 days after the filling of such vacancy the name and such other prescribed particulars of the worker filling the vacancy and forward the job card (if any) of the worker to the Employment Services Bureau.

## 12. Returns

- (1) An employment agency shall in respect of each month submit to the Employment Services Bureau on or before the 15th day of the immediately following month a return specifying—
  - (a) the names and other particulars of persons registered under [section 8](#) as persons applying for the purpose of finding employment;
  - (b) the particulars of vacancies registered by the agency under [section 9](#);
  - (c) the names and other particulars of workers employed in respect of whom information has been supplied under [section 9\(6\)](#),during the month in respect of which the return is submitted.
- (2) Where in respect of a month for which the employment agency is required to submit a return under subsection (1), the employment agency has not registered any person or vacancy or received any particulars of persons employed it shall submit to the Employment Services Bureau a nil return for that month.

## 13. Accounts

- (1) An employment agency shall keep proper accounts and proper records in relation to the accounts and shall prepare in respect of each financial year a statement of accounts in such form as shall comply with the best commercial standards.

- (2) The accounts and statement of accounts of an employment agency shall be audited by an auditor appointed by the employment agency.
- (3) An employment agency shall within 30 days after the accounts and the statement of accounts are audited under subsection (2), submit to the Employment Services Bureau the statement of accounts and the auditor's report thereon.

#### **14. Rights of entry for examination and inquiry**

A competent officer may—

- (a) at any time enter any office of an employment agency and make any examination or inquiry which the officer considers necessary in order to satisfy the officer that the provisions of this Part are being complied with and may take extracts or make any copies from any register or other documents kept by the agency;
- (b) require the production by an employment agency for the purpose of any examination or inquiry by that officer of any register or other document kept by the employment agency.

#### **15. Regulations in respect of employment agencies**

The Minister may make such regulations as may be necessary or required for the proper functioning of an employment agency.

#### **16. Self-employed workers**

- (1) Every self-employed worker shall furnish to the Employment Services Bureau such particulars as may be prescribed.
- (2) The Employment Services Bureau shall in a register kept by the Bureau enter the particulars furnished under subsection (1).
- (3) Where a person, being a self-employed worker ceases to be a self-employed worker or obtains employment under an employer, such person shall within 15 days after ceasing to be a self-employed worker or obtaining employment under an employer inform the Employment Services Bureau of such occurrence, and furnish to the Bureau such particulars as may be prescribed.

#### **17. Job card**

- (1) Every unemployed Seychellois seeking employment and every employed Seychellois seeking alternative employment shall furnish to the Employment Services Bureau the particulars specified in subsection (2) and obtain from the Employment Services Bureau a job card.
- (2) The particulars required to be furnished by an unemployed Seychellois under subsection (1) are—
  - (a) the name, address, date of birth, national identity number of that person;
  - (b) particulars of skills or qualifications held by the person;
  - (c) nature of employment sought by the person; and
  - (d) any other prescribed particulars.
- (3) Where a person referred to in subsection (1) obtains employment with an employer, the person shall submit the job card to that employer.

#### **17A. Prohibition of employment of Seychellois without job cards**

From and after the date of coming into operation of this section, no person shall employ a Seychellois who has not obtained a job card from the Employment Services Bureau.

## 18. Restriction on employment of non-Seychellois

- (1) Subject to the Immigration Decree an employer in Seychelles shall not employ a non-Seychellois unless—
  - (a) the employer holds a certificate from the competent officer to the effect—
    - (i) that the vacant post for which the non-Seychellois is required has been advertised under section 9(4) or 11 and;
    - (ii) that—
      - (A) the post requires the qualification demanded for it and no Seychellois holding the qualification is, at present, available for employment in that post, or
      - (B) the Minister is satisfied that there is no unemployed Seychellois available for employment in the vacant post;
  - (b) the employer has, together with the application for a certificate under paragraph (a) submitted in respect of the employer's establishment, a detailed manpower plan setting out a training and localization programme.
- (2) An employer who employs a non-Seychellois worker shall ensure—
  - (a) that the contract of employment of the worker which shall be a fixed-term contract is attested by a competent officer;
  - (b) that the worker ceases to be in the employment of the employer upon the expiration of the unless the contract is, subject to subsection (1), extended or renewed; contract of employment

## Part III – Contracts of employment

### 19. Contracts of employment

- (1) A contract of employment may be a contract—
  - (a) of continuous employment;
  - (b) for a fixed term;
  - (c) for the employment of a part-time worker; or
  - (d) for the employment of a casual worker.
- (2) Where a contract for a fixed term is expressed to be for a period determined by reference to is duration in time, the contract, shall be for such period, not less than 3 months, as may be determined by the parties to the contract.

Provided, however, that where the interval between two consecutive fixed term contracts under which a worker is employed by the employer is not more than ninety days, the worker shall be deemed to have been in continuous employment during such interval and such worker shall be entitled to compensation under this Act in respect of the entire period of such employment.

### 20. Contracts by minors

Notwithstanding any written law, a contract of employment entered into by a young person and whereby the young person is, or is to be, employed is binding upon the young person if attested by the competent officer.

## 21. Written contracts generally

- (1) A contract of employment to which [section 19\(1\)\(a\)](#), (b) or (c) refers shall—
  - (a) be reduced to writing by the employer;
  - (b) be in duplicate;
  - (c) specify as accurately as possible—
    - (i) the names of the employer and worker;
    - (ii) the nature of the employment;
    - (iii) in the case of a fixed-term contract, either the term or the specific scheme or project or specific work on which the worker is to be engaged, as the case may be;
    - (iv) in the case of a contract of continuous employment, the probation period, if any;
    - (v) the place where the work is to be performed;
    - (vi) the remuneration or wages to be paid and the periods of payment and any other benefits the worker is to receive;
    - (vii) the number of working hours per week;
    - (viii) the requirements for overtime work, where applicable;
    - (ix) such other particulars as may be prescribed;
  - (d) subject to subsection (3), be signed or marked by the parties to the contract.
- (2) The employer shall retain one copy of the contract of employment and give the other copy of the contract to the worker.
- (3) Where a party to the contract is illiterate, the contract shall be read and explained, and attested on behalf of the party, by a witness whose signature, full name and address shall appear on the contract.

## 22. Contracts of employment (outer islands)

- (1) Notwithstanding [section 21](#), contracts of employment for work on an outer island shall be for such period as may be determined by the parties to the contract and shall be—
  - (a) reduced to writing by the employer and contain the particulars specified in [section 21\(1\)\(c\)](#);
  - (b) in duplicate; and
  - (c) subject to subsection (2), signed or marked by the parties.
- (2) Where a party to the contract is illiterate, the contract shall be read and explained and attested on behalf of the party by a witness whose signature, full name and address shall appear on the contract.
- (3) The employer shall retain one copy of the contract and give the other copy to the worker.

## 23. Detention of worker beyond period of outer island contract

Where a worker is detained on an outer island for a period of up to one month beyond the date of expiry of the contract of the worker, the contract is deemed to be extended for that period but after a month has elapsed, the obligation to work ends but the worker remains entitled to the pay stipulated under the contract and to all benefits thereunder until the worker returns to the home island of the worker or, where the home island is not Mahe, to Mahe.

**24. \*\*\***

*[section 24 repealed]*

**25. Contracts for casual work**

- (1) A contract for the employment of a casual worker is not required to be in writing.
- (2) An employer shall not employ a casual worker, whether it be the same or another worker, for a period longer than 3 months or such other longer period authorized by a competent officer.
- (3) Subject to subsection (2), an employer shall not employ a casual worker in a job which is of a permanent or continuous nature except for the purpose of allowing the substantive holder of the job to go on leave or to fill in a vacancy pending recruitment of a substantive holder for the job.
- (4) The Minister may, by regulations, exempt any category of workers from the application of subsection (1), (2) or (3).

**26. Language of contracts**

Written contracts of employment under this Part shall be in English, French or Creole.

## **Part IV – Trainees**

**27. Trainees**

The following persons are deemed to be trainees—

- (a) persons employed as trainees on an employer's training scheme in respect of the whole period of their training;
- (b) untrained workers in occupations for which a training course is readily available until they have completed their training;
- (c) participants in apprenticeship schemes.

**28. National Vocational Training Board**

- (1) There is hereby established the National Vocational Training Board.
- (2) The National Vocational Training Board shall in collaboration with public or private organizations promote, develop and organize training and apprenticeship schemes and coordinate their activities.
- (3) The National Vocational Training Board shall keep at the Centre for Skills Development established by the Board a register of training and apprenticeship schemes organized by the Board.
- (4) The National Vocational Training Board shall issue policy guidelines and make recommendations to the Minister with a view to promoting the vocational training of Seychellois workers.
- (5) Schedule 4 shall have effect with respect to the National Vocational Training Board.

**29. Premiums from trainees prohibited**

- (1) An employer shall not receive directly or indirectly from a trainee or on behalf or on account of a trainee any payment by way of premium not specifically authorized by or under a written law.
- (2) The court may, in addition to imposing any penalty for contravening subsection (1), order the employer to repay to the trainee or other person by whom the payment was made the sum improperly received as premium.

### 30. Allowances for trainees and young workers

A trainee shall be entitled to such allowances as the Minister may, by regulations, prescribe.

### 31. Benefits

Subject to [section 33](#), trainees are entitled to the same conditions of employment as other workers and to any other additional benefits approved by the competent officer.

## Part VA – Protection of wages

### 32. Payments of wages

- (1) Unless otherwise provided under this Act, the wages of a worker are payable to the worker in the currency of the country where payment is made—
  - (a) in cash at or near the place of employment; or
  - (b) by cheque or bank transfer but with the worker's consent where the wages are less than R.2000 a month or such other monthly sum as may be prescribed.
- (2) Wages payable in cash are payable at regular intervals as agreed between employer and worker but not less than once a month and not later than the fifth day following the date on which they fall due.
- (3) Wages payable by cheque or by bank transfer are payable not less than once a month before the date on which they fall due.

### 33. Authorised deductions

- (1) An employer may make deductions from the wages of a worker in respect of—
  - (a) any amount which the employer is required or empowered to deduct from the wages under any written law or court order;
  - (b) the recovery of the cost of any damage done to, or loss of, any property lawfully in the possession or custody of the employer occasioned by the willful default of the worker;
  - (c) any amount paid to the worker in error as wages in excess of the amount of wages due to the worker;
  - (d) an amount equal to the amount of any shortage of money arising through the negligence or dishonesty of a worker, who, by virtue of the occupation of the worker, is entrusted with the receipt, custody and payment of money;
  - (e) such other amount as the worker may in writing authorize.
- (2) Without prejudice to any right of recovery of any debt due, the total amount of all deductions which, under subsection (1)(b), (c) and (d) may be made by an employer from the wages payable to a worker at any one time shall not exceed one quarter of the wages unless the worker authorises a higher amount in writing.
- (3) Notwithstanding subsection (2) where any sum of money is due from a worker to the employer of the worker at the time the worker ceases to be employed by the employer, the employer may deduct that sum from any sum due from the employer to the worker as wages or any other benefit under the Act.

### 34. Disposal of wages

- (1) An employer shall not limit or attempt to limit the right of a worker to dispose of the wages as the worker deems fit.
- (2) An employer having a shop, store, or place for the sale of commodities to the workers of the employer shall not directly or indirectly, bind a worker to make use of any such shop, store or place.

### 35. Record of wage payments

- (1) An employer, other than an employer solely employing part-time, casual or domestic worker, shall keep a record of the wages due to each of the workers in the employment of the employer, of the deductions made therefrom and of the amounts actually paid.
- (2) The record shall be kept at the place of employment and shall be available for inspection by the competent officer.

### 36. Evidence of payment

- (1) An employer when paying the wages of a worker shall keep a record of the payment together with evidence of receipt of payment by the worker, and issue a pay slip recording details of payment to the worker; and
- (2) Where an employer fails to comply with subsection (1) and there is a dispute over the fact of payment, a presumption that the employer has not made payment arises against the employer.
- (3) Where the receipt of payment is not recorded on the record kept under [section 35\(1\)](#), the receipt of payment shall contain the particulars of wages together with the deductions made therefrom.

### 37. Workers privileged creditors

Notwithstanding any other written law, privileges and rights in respect of wages of servants under Articles 2101, 2104 and 2105 of the Civil Code extend to—

- (a) the wages of all workers;
- (b) their holiday pay;
- (c) payment in lieu of notice due to them upon termination of employment; and
- (d) compensation due upon termination,

up to an amount of R30,000, or any larger amount prescribed, in respect of any one claimant.

### 38. Absconding employer

- (1) Where an employer or former employer of any worker is about to leave Seychelles or to alienate his property or to do any other act—
  - (a) without having paid or made satisfactory arrangements to pay—
    - (i) any wages due to the worker; or
    - (ii) any other moneys owed by the employer or former employer to the worker; or
  - (b) with the intention, as may be presumed from the circumstances surrounding the business or finances of the employer or former employer, of foregoing the obligations, past or future, to the worker under this Act,

then, unless the employer or former employer furnishes sufficient and good security for the full amount of the wages and moneys due under paragraph (a) and of the obligations under paragraph

(b), the competent officer may apply to the Supreme Court for an order preventing the employer or former employer from leaving Seychelles or alienating his property or doing such other act.

- (1A) It shall be lawful for a competent officer, for the purpose of making an application under subsection (1), to require by written notice any airline or travel agency to furnish the competent officer with such information as may be specified in the notice in respect of any travel arrangement made by any person and it shall be the duty of such airline or travel agency to comply with the requirement of such notice.
- (2) An order of the Supreme Court under subsection (1) preventing the employer or former employer from leaving Seychelles or alienating his property or doing such other act shall be sufficient authority for the Director of Immigration from preventing the employer or former employer from leaving Seychelles or alienating his property or doing such other act.
- (3) Where the Supreme Court is satisfied that an employer or former employer in respect of whom an order has been made under subsection (1) has paid the amount of wages and moneys and discharged the obligations or furnished sufficient and good security for the payment of the amount of wages and moneys or for the discharge of the obligations, the Supreme court may vacate the order.
- (4) The Chief Justice may make rules of the Supreme Court for the purposes of an application under subsection (1).

### 39. When wages not due

Where a worker—

- (a) is absent from work without leave and without good cause;
- (b) is in prison or otherwise detained in lawful custody,

no wages are due to the worker, and the employer may, at his discretion, withhold payment for the period of absence, imprisonment or detention.

#### 39A. Prohibition against deferment or reduction of wages

- (1) Notwithstanding anything to the contrary in this Act, an employer shall not, whether with the agreement of the worker or otherwise—
  - (a) defer the payment of wages, whether partly or otherwise, of a worker; or
  - (b) reduce the wages of a worker;without first initiating and complying with the negotiation procedure.
- (2) Part 1A of schedule 1 shall, *mutatis mutandis*, apply to negotiation procedure under this section.
- (3) Where consequent to the negotiation procedure, the competent officer determines—
  - (a) that payment of the wages may be deferred or that the wages may be reduced, as the case may be, the employer shall be entitled to defer payment of, or reduce, the wages in accordance with the directions issued by the competent officer; or
  - (b) that payment of the wages shall not be deferred or that the wages shall not be reduced, as the case may be, the employer shall comply with the determination.
- (4) In making a determination under this section the competent officer shall take into account all relevant matters and shall, notwithstanding any other time-limit set out in this Act or any other law, make a determination within a period of 14 days from the start of the negotiation procedure.
- (5) The competent officer shall allow a deferment of the payment of the wages or a reduction of the wages, as the case may be, on being satisfied that the consent on the part of the worker to the deferment or reduction was obtained without any threat, duress, fraud or mistake.

- (6) This section shall not apply to a worker in respect of whom the employer has not received full salary support from the Government without prejudice to the right of a worker to initiate a grievance procedure under Part III of Schedule 1.
- (7) This section shall lapse on termination of the Government programme for salary support to employees in the private sector as a result of the Covid-19 pandemic.

*[section 39A(1) inserted by section 2(a) of Act 20 of 2020 w.e.f from 20 March 2020.]*

## **Part VB – Regulation of wages and conditions of employment**

### **40. Regulations relating to wages and conditions of employment**

- (1) The Minister may, after consultation with the Unions and the employers organizations and such other representatives of workers of any category who are not members of any Union whom the Minister considers it fit to consult, make regulations prescribing—
  - (a) the statutory wages to be paid to workers by employers in accordance with subsection (2);
  - (b) the conditions of employment to be provided for workers by employers.
- (2) Regulations under subsection (1)(a) may—
  - (a) prescribe a national minimum wage for workers, other than trainees, and mandatory wages in respect of such workers or category of such workers or in relation to any business;
  - (b) provide for increments and the conditions under which they may be awarded or withheld;
  - (c) prescribe allowances for trainees;
  - (d) authorize benefits or advantages provided by the employer which may be reckoned as payment of wages by the employer in lieu of payment in cash and define the maximum value to be attached to them;
  - (e) provide for any other matter in respect of wages.
- (3) Regulations under subsection (1)(b) may prescribe—
  - (a) the maximum permissible number of hours of work, normal and overtime, in any day or week, rest periods and the number of consecutive hours of rest to which a worker is entitled;
  - (b) the number of days of annual leave, maternity leave, sick leave, leave for the purpose of fulfilling or in connection with any civic duties or unpaid leave and the conditions under which such leave may be granted;
  - (c) extra rates of payment or time off in lieu of overtime, work on Sundays and other public holidays and exceptions therefrom;
  - (d) the maximum sum which an employer may deduct from the wages to be paid to a worker in respect of the costs of food or housing or both food and housing provided by the employer;
  - (e) conditions attaching to the employment of women, trainees and disabled persons;
  - (f) maternity protection benefits;
  - (g) facilities to be granted to the worker for training or for social, sport and cultural activities;
  - (h) generally improved living and working conditions.

### **41. Calculation of wages**

- (1) Subject to subsection (2) and unless regulations made under subsection (3) otherwise provide, wages are calculated on an hourly basis.

- (2) Wages may be calculated on a task or piece work basis wherever the Minister is satisfied that such calculation will encourage productivity, but where wages are so calculated, the worker shall not receive less than the national minimum wage.
- (3) The Minister may, by regulations, prescribe the manner of computing wages either generally or in respect of any class or category of workers.

#### **42. Deduction for food or housing**

- (1) Where a maximum sum to represent food or housing or both food and housing has been prescribed, the employer may deduct from the worker's wages, if in excess of the national minimum wage, in payment therefore—
  - (a) the maximum sum prescribed;
  - (b) the actual cost of the food or housing or of both food and housing; or
  - (c) the difference between the worker's wages and the national minimum wage,whichever is the less.
- (2) Where no sum has been prescribed under subsection (1), no deduction from the worker's wages is allowed in respect of food or housing or both food and housing except with the written approval of the competent officer.

#### **43. Effect and enforcement of regulations**

The statutory wages prescribed under [section 40\(1\)\(a\)](#) and the conditions of employment prescribed under [section 40\(1\)\(b\)](#) are deemed to be part of every contract of employment to which they relate, whether the contract was entered into before or after the commencement of this Act save that—

- (a) where the contract provides for a wage higher than the national minimum wage, that higher wage, if not itself in excess of any mandatory wage applicable, or, if that higher wage exceeds the mandatory wages, the mandatory wage, shall apply;
- (b) where the contract provides for conditions of employment more favourable than those prescribed, those conditions more favourable shall apply unless otherwise prohibited under this Act.

#### **44. \*\*\***

*[section 44 repealed]*

#### **45. Security for wages**

The competent officer may, where the officer deems it necessary, require an employer to give security for the payment of the wages of, and for the discharge of any other obligations which the employer may have or incur towards the workers engaged or to be engaged by the employer, the security to be in such form as the competent officer may demand or as may be prescribed.

#### **46. Employment benefits**

- (1) Workers under contract of continuous employment are entitled to all employment benefits under this Act from the date of employment until lawful termination of the contracts.
- (2) Workers under contracts of employment for a fixed-term are entitled to all employment benefits up to the day the fixed-term contract expires or the earlier lawful termination of the contracts, as the case may be.

- (3) Where the lawful termination of the contract as referred to in subsection (1) or (2) is immediately preceded by a period of suspension without pay, the termination is deemed to take effect as from the date the period of suspension began.

## **Part VI – Protection of employment**

### **46A. Prevention of discrimination**

- (1) Where an employer makes an employment decision against a worker on the grounds of the worker's age, gender, race, colour, nationality, language, religion, disability, HIV status, sexual orientation or political, trade union or other association, the worker may make a complaint to the Chief Executive stating all the relevant particulars.
- (2) The Chief Executive shall hold an inquiry into the complaint, make a determination and communicate the determination to the worker and the employer, and where an act of discrimination is held to have been established, the determination shall include such directions to the employer as are necessary to redress the grievance complained of.
- (3) An employer to whom a direction is issued under subsection (2) shall comply with the direction.
- (4) For the purpose of this section—
  - "worker" includes a prospective worker;
  - "employer" includes a prospective employer;
  - "employment decision" means any decision relating to the recruitment, conditions of employment, wages, disciplinary control or termination of employment of a worker.

### **46B. Harassment prohibited**

An employer shall not commit any act of harassment against a worker.

### **46C. Thirteenth month pay**

- (1) For the purpose of this section—
  - "corresponding year" means the year for which the thirteenth month pay is due; and
  - "salary" shall have the same meaning as wages.
- (2) Every employer shall pay to his, her or its workers a thirteenth month pay in addition to their due salary.
- (3) The payment under subsection (2) shall become due on 31st December of every year and it shall be made on or before 31st January of the following year.
- (4) The amount of the thirteenth month pay is equivalent to the monthly salary of a worker excluding any allowance or other monetary benefits forming part of the salary;
  - Provided that—
    - (a) a worker who has taken up employment with an employer for a period of not less than twelve months inclusive of the probation period shall be entitled to a thirteenth month pay;
    - (b) this entitlement does not constitute a monthly salary and shall not be taken into account in the total salary per year for the purpose of calculation of any employment benefits; and
    - (c) this entitlement shall be independent from any bonus paid under an employer's scheme or any other payments made by the employer provided however that where the employer who is contractually obligated to pay a bonus as per the contract of employment and if the amount

of bonus is higher than the thirteenth month pay, the employer may deduct the thirteenth month pay from the bonus, and the balance amount shall be paid to the employee.

- (5) A worker who has been on overseas training for an aggregate period exceeding 14 weeks or on unpaid leave for more than one month in the corresponding year shall be paid in proportion to the period of service excluding the time spent on training or unpaid leave.
- (6) A worker who is in prison or otherwise detained in lawful custody for any period in the corresponding year shall be eligible for pro-rata payment only.
- (7) Where a worker is on unauthorised absence from work—
  - (a) for the first day of absence, one day's pay shall be deducted from the 13th month pay; and
  - (b) for the subsequent days of absence, 3 day's pay for each subsequent day shall be deducted from the 13th month pay.
- (8) The following workers shall not be eligible to receive a thirteenth month pay under subsection (2)—
  - (a) non-Seychellois workers;
  - (b) workers who are on contract for skills development;
  - (c) workers whose basic monthly salary is above an amount as may be prescribed by the Minister; and
  - (d) any other category to be prescribed by the Minister.
- (9) An employer who is unable to pay the thirteenth month pay under subsection (2) shall make an application to the Thirteenth Month Pay Committee constituted by the Minister responsible for Finance in consultation with the Minister responsible for Employment within a period of three months from which the thirteenth month pay becomes due.
- (10) The Thirteenth Month Pay Committee shall consider the application submitted under subsection (9) within a period of one month and the decision taken by the Committee shall be communicated to the employer concerned in writing.
- (11) In considering an application received under section (9), the Thirteenth Month Pay Committee shall take into consideration such factors and adopt such procedures as may be prescribed.
- (12) An employer shall not be entitled to submit an application under subsection (9) after 2 years from the date of coming into operation of the Employment (Amendment) Act, 2016.

*[section 46C inserted by section 2(a) of Act 24 of 2016 w.e.f. 29 December 2016]*

#### **47. Restriction on termination of contracts**

- (1) Subject to Part VIII, an employer shall not terminate, or give notice of termination of a worker's contract of employment except under section 49 or 50 unless the employer first initiates and complies with the negotiation procedure.
- (2) Where, consequent upon the negotiation procedure initiated under subsection (1), the competent officer determines that—
  - (a) a contract of employment should not be terminated, the contract shall continue to have effect;
  - (b) a contract of employment may be terminated and the cause of the termination is in no way attributable to the worker, the employer shall pay to the worker compensation calculated at —
    - (i) the rate of five sixths of one day's wage for each completed month of service in the case of contracts of continuous employment;
    - (ii) double the rate in sub-paragraph (1) in the case of fixed term contracts; or

- (iii) such higher rate as may be prescribed;
  - (c) a contract of employment may be terminated and the cause of the termination is partly or wholly attributable to the worker, the employer shall pay to the worker a lesser rate of compensation than at paragraph (b) or none, as the competent officer may assess.
- (3) The reference to every month of service in subsection (2)(b)(i) includes service with a previous employer where the service is continued by the new employer without termination by the previous employer.
- (4) For the purpose of computing compensation under subsection (2)(b) or (c)—
- (a) no account is taken of any period of service in respect of which a pension or a gratuity was earned and is payable under the Pensions Act or the Seychelles Security Guards Service Pensions Act;
  - (b) the wage shall be the wage payable to the worker at the time the contract of employment was terminated.
- (5) For the purposes of this section, "wage" includes any responsibility allowance or duty allowance.

#### **48. Restriction on lay-offs of workers**

- (1) Where, due to circumstances beyond an employer's control such as a shortage of raw materials, a natural catastrophe or any disruption of work which could not have been foreseen, work has to be temporarily suspended and workers temporarily laid off, the employer shall initiate and comply with the negotiation procedure.
- (2) Where, consequent upon the negotiation procedure initiated under subsection (1), the competent officer approves the lay-offs, the officer shall notify the employer and the Union of the conditions under which they are approved, the authorized period of the lay-offs and the percentage of wages to be paid to the workers during that period.
- (3) An employer shall not lay off workers—
- (a) without the approval of the competent officer;
  - (b) on conditions other than those notified by the competent officer;
  - (c) for a period longer than authorized.

#### **49. Variation on terms of employment**

- (1) An employer shall not vary the terms and conditions of employment of a worker in any way less favourable to the worker without the worker's written consent and that of the Union.
- (2) Where the written consent required under subsection (1) to a variation of the terms and conditions of employment of the worker cannot be obtained, the employer may subject to subsection (3) and [section 57\(2\)](#) terminate the contract of employment of the worker.
- (3) The termination of employment of a worker under subsection (2) shall be deemed to be for a cause in no way attributable to the worker and the worker is entitled to compensation calculated in accordance with [section 47\(2\)\(b\)](#).

#### **50. Termination of contracts upon change of ownership**

- (1) Where an employer transfers a business undertaking in which workers are employed to another person, and the other person accepts the obligations of the employer with effect from the date of transfer, irrespective of whether the ownership of the assets of the undertaking are transferred or not, the first mentioned employer shall be deemed to have terminated the contract of employment of the workers immediately before the date of transfer subject to subsection (2).

- (2) The termination of employment of such workers shall be deemed to be for a cause in no way attributable to the workers and the workers shall be paid compensation calculated in accordance with [section 47\(2\) \(b\)](#) regardless of whether they are employed or not employed by the person to whom the undertaking is transferred.
- (3) An employer who knows, or may reasonably be deemed to know, that a transfer of the business undertaking is due to occur, shall within one month notify the Chief Executive in writing of that fact and take steps to comply with the provisions of subsection (2).

## 51. Redundancy of workers

- (1) Subject to this section, where as a result of an employer—
  - (a) ceasing to operate, in whole or part, a business, otherwise than as provided under [section 50](#);
  - (b) temporarily suspending, in whole or part, the operation of a business for any reason specified in [section 48\(1\)](#);
  - (c) reconstructing the operation of a business for the purpose of facilitating improvement in the business by which greater efficiency and economy can be effected; or
  - (d) introducing new technology in a business,a worker employed in the business has become redundant and it is necessary to terminate the contract of employment of the worker the employer shall, before terminating the contract of employment, initiate and comply with the negotiation procedure.
- (2) Where consequent upon the negotiation procedure initiated under subsection (1), the competent officer determines—
  - (a) that the contract of employment of the worker may be terminated the worker shall be entitled to compensation calculated in accordance with [section 47\(2\)\(b\)](#);
  - (b) that the contract of employment of the worker shall not be terminated, the contract shall continue to have effect.

### 51A. Restriction on lay-off and redundancy of a Seychellois worker

An employer shall not be allowed to temporarily lay off or make redundant a Seychellois worker, if the employer—

- (a) is employing a non-Seychellois worker in a similar post as the Seychellois worker; and
- (b) has not initiated the negotiation procedure to temporarily lay-off or make redundant, as the case may be, the non-Seychellois worker.

*[section 51A. inserted by section 2(b) of Act 20 of 2020 w.e.f. 20 March 2020]*

## Part VII – Discipline

### 52. Disciplinary offences

- (1) A disciplinary offence listed in Part 1 of Schedule 2 is a minor disciplinary offence.
- (2) Any—
  - (a) disciplinary offence listed in Part II of Schedule 2; and
  - (b) minor disciplinary offence which is preceded by 2 or more disciplinary offences, whether of the same nature or not, in respect of which some disciplinary measure has been taken,is a serious disciplinary offence.

- (3) Where a minor disciplinary offence is not followed by another minor disciplinary offence within 12 months of its commission, that offence is deemed not to have been committed and is discounted for the purposes of subsection (2).

### 53. Disciplinary proceedings

- (1) No disciplinary measure shall be taken against a worker for a disciplinary offence unless there has been an investigation of the alleged offence or where the act or omission constituting the offence is self-evident, unless the worker is given the opportunity of explaining the act or omission.
- (2) Where the disciplinary offence relates to a serious disciplinary offence, the worker shall be informed in writing with copy to the Union, if any, of the nature of the offence as soon as possible after it is alleged to have been committed and of the suspension of the worker, where the employer deems suspension to be necessary as a precautionary measure or for investigative purposes.
- (3) The employer shall ensure that the investigation pursuant to subsection (1), even where it consists in no more than requiring an explanation for a self-evident act or omission, is conducted fairly and that the worker has, if the worker so wishes, the assistance of a colleague or a representative of the Union, if any, and of such witnesses as the worker may wish to call.
- (4) Where a disciplinary offence is established, the employer shall decide on the disciplinary measure to be taken and, where such measure is termination without notice, shall inform the worker of the same in writing with copy to the Union, if any.
- (5) A worker aggrieved by a disciplinary measure taken against the worker may initiate the grievance procedure and under that procedure the burden of proving the disciplinary offence lies on the employer.
- (6) In subsection (3) "representative of the Union" means a person nominated by the Union.

### 53A. Drunkenness while at work, etc.

Where an employer has reasonable grounds to believe that a worker is under the influence of alcohol or a controlled drug, during working hours and is unfit to work, the employer may require the worker to take a breath test or to give a specimen of urine or blood for analysis in accordance with regulations made in that behalf. For the purpose of this section, "controlled drug" has the meaning assigned to it by section 2 of the Misuse of Drugs Act ([Cap 133](#)).

### 54. Disciplinary proceedings relating to criminal matters

- (1) If, while a disciplinary offence is being investigated under [section 53](#), a criminal proceeding is instituted against the worker in respect of the same offence, the investigation may be continued and completed.
- (2) Nothing in this section is to be read as preventing a disciplinary measure from having effect subject to [section 53\(5\)](#), whatever the outcome of a criminal proceeding.

### 55. Disciplinary measures

Upon proof of a disciplinary offence, the employer may take any one or more of the disciplinary measures listed in Part III of Schedule 2, but, upon the grievance procedure being initiated under [section 53\(5\)](#), the Tribunal may review such disciplinary measure and substitute another or none as the Tribunal deems fit.

### 56. Suspension

- (1) When investigating a serious disciplinary offence, the employer may suspend a worker without pay —
  - (a) pending the investigation but for no longer than 1 month;

- (b) where the investigation is discontinued under [section 54\(1\)](#), pending the outcome of the trial and shall inform the worker, in writing, of the outcome of the investigation.
- and shall inform the worker, in writing, of the outcome of the investigation.
- (2) Where a worker who has been suspended under subsection (1) is reinstated, the worker is entitled to payment for the period of suspension.
- (3) A worker who is suspended under subsection (1) may terminate the contract of employment with notice.
- (4) An employer shall, before the expiry of 40 days after the date of suspension of a worker under subsection (1)(a), or immediately after the completion of an investigation referred to in subsection (1)(b), inform the worker of the outcome of the investigation.
- (5) A worker who is aggrieved by the failure of an employer to comply with the provisions of subsection (4) or by the result of the investigation may initiate the grievance procedure under Part II of Schedule I.

## Part VIII – Termination of contracts

### 57. Termination by employer

- (1) An employer may terminate a contract of employment with notice upon a determination by the competent officer following the negotiation procedure initiated under Part VI that the contract may be terminated.
- (2) Notwithstanding [section 47](#), an employer may terminate a contract of employment with notice in the following cases—
- (a) where the worker is on probation, during the worker’s probationary period if the worker does not satisfactorily complete the period;
- (b) where the worker is a trainee under [section 27\(a\)](#), at the end of the training period if the worker fails to satisfactorily complete the training;
- (c) where the termination is under [section 49](#) or [50](#), on the occurrence of the event specified therein;
- (d) where the worker is a casual, part-time or domestic worker, at any time.
- (3) Notwithstanding subsection (2), notice of termination shall not be given to a worker while that worker is on sick leave or pregnant or on maternity leave unless the competent officer so authorises.
- (4) Notwithstanding [section 47](#) an employer may terminate a contract of employment without notice where the worker has committed a serious disciplinary offence within the meaning of that expression in [section 52\(2\)](#).
- (5) An employer shall not, otherwise than under this section, terminate the contract of employment of a worker.
- (6) An employer shall notify a worker,
- (a) who is employed under a fixed term contract; or
- (b) a worker who is about to reach retirement age,
- at least 1 month before the expiration of the contract or the date of retirement, as the case may be, of that fact failing which the employer shall pay the worker referred to in paragraph (a) or (b) 1 month’s wages in lieu of such notice.

## 58. Frustration of contracts

- (1) A contract is frustrated when it becomes impossible of performance as when, among other things or reasons—
  - (a) the business of the employer ceases through its becoming prohibited or illegal under any written law;
  - (b) a worker is disqualified through the suspension or cancellation of any licence, permit, registration or authority required under the written law for the purpose of exercising the occupation or profession of the worker,and, except in the case of paragraph (b), the worker, other than a casual worker, is entitled upon frustration of the contract to one month's notice or to payment in lieu and to any additional compensation payable under [section 62](#).
- (2) Where a contract is frustrated through a business ceasing as a result of an acquisition by Government under the Acquisition of Lands in the Public Interest Act, any liability under subsection (1) for payment in lieu of notice and payment of compensation lies primarily upon the Government subject to reimbursement by the employer.
- (3) For the avoidance of doubt it is declared that where a contract is frustrated the negotiation procedure under Part VI and the grievance procedure under [section 61](#) do not apply.
- (4) An employer whose business ceases under subsection (1)(a) shall forthwith notify the competent officer of the same.

## 59. Period of notice by employer

Termination under [section 57\(1\)](#) and (2) requires—

- (a) in the case of any casual worker, one day's notice;
- (b) in the case of a worker on probation seven day's notice;
- (c) in the case of any other worker, other than a non-Seychellois worker, one month's notice;
- (d) in the case of a non-Seychellois worker, not being a casual worker, the period of notice specified in the contract of employment of the worker or a worker on probation or, where a period of notice is not specified, one month's notice.

## 60. Termination by worker

- (1) A worker may terminate the contract of employment of the worker—
  - (a) in the case of any casual worker, with one day's notice;
  - (b) in the case of a worker on probation, with seven day's notice;
  - (c) in the case of any other worker, other than a non-Seychellois worker, with one month's notice;
  - (d) in the case of a non-Seychellois worker, not being a casual worker or a worker on probation, with the period of notice specified in the contract, or where a period of notice is not specified, with one month's notice.
- (2) A worker, other than a casual worker, may terminate the contract of employment of the worker without giving prior notice—
  - (a) where the employer is in breach of the contract with the worker and such breach justifies termination;

- (b) where the employer acts in contravention of the Act and such contravention justifies termination; and
- (c) where the worker has been laid off;

but the worker shall inform the employer forthwith in writing of the termination and of the reason therefore and shall obtain from the employer the certificate of employment referred to in [section 69](#).

## 61. Grievance procedure

- (1) A worker—
  - (a) whose contract of employment is terminated—
    - (i) pursuant to [section 57\(2\)\(a\)](#) or (b);
    - (ii) for a serious disciplinary offence pursuant to [section 57\(4\)](#);
  - (c) who terminates his contract under [section 60\(2\)\(a\)](#) or (b),may initiate the grievance procedure.

*[Please note: numbering as in original.]*

  - (1A) Where a worker or employer has registered a grievance, the competent officer shall endeavour to bring a settlement of the grievance by mediation.
  - (1B) A competent officer in mediating a settlement, shall draw up a mediation agreement which shall be signed by the parties and be presented to the Tribunal for endorsement as a form of judgment by consent.
  - (1C) If a party breaches the mediation agreement or any part thereof, the agreement shall be enforced by the Tribunal.
  - (1D) If the competent officer is unsuccessful in the mediation he shall issue a certificate to the parties as evidence that mediation steps have been undergone by such parties.
  - (1E) A party to a grievance shall bring the matter before the Tribunal within 30 days if no agreement has been reached at mediation.
- (2) Upon conclusion of a case before the Tribunal initiated under subsection (1), the Tribunal may determine as follows—
  - (a) in the case of subsection (1)(a)—
    - (i) that termination is justified;
    - (ii) that termination is not justified and that the worker is reinstated in the post or offered other suitable employment and that, where applicable, some disciplinary measure or non be taken in lieu of termination;
    - (iii) that termination is not justified but, as it would be impractical or inconvenient to reinstate the worker in the post or offer the worker other suitable employment, allow the termination subject, in the case of subsection (1)(a)(ii), to the payment in lieu of notice of one month's wages or, where an amount is specified in the worker's contract of employment in the case of a non-Seychellois worker referred to in [section 59\(c\)](#), that amount and in any other case subject to the termination taking effect on the date of the competent officer's determination;

- (b) in the case of subsection (1)(b)—
  - (i) that termination is justified, in which case the worker is entitled to the payment of one month's salary in addition to any benefits or compensation the worker may have earned;
  - (ii) that termination is not justified, in which case the worker is liable to pay the employer a sum equal to one month's salary or, where an amount specified in the contract of employment in the case of a non-Seychellois worker referred to in [section 60\(1\)\(d\)](#), that amount and the employer may deduct the sum or the amount from any payments owed by him to the worker in accordance with [section 33\(2\)](#).

## 62. Compensation upon termination

Where—

- (a) a contract of employment is frustrated, other than under [section 58\(1\)\(b\)](#);
- (b) a contract of employment is terminated by an employer—
  - (i) under [section 57\(2\)\(a\)](#) or (b) and the grievance procedure is initiated by the worker with the result that termination is allowed under [section 61\(2\)\(a\)\(iii\)](#);
  - (ii) other than for a serious disciplinary offence under [section 57\(4\)](#);
- (c) a contract of employment is terminated by the worker and the Tribunal determines pursuant to [section 61\(2\)\(b\)\(i\)](#) that the worker is justified in terminating the contract,

compensation is payable to the worker, in addition to his wages and any benefits earned, in accordance with [section 47\(2\)\(b\)](#) or (c).

## 62A. Compensation upon resignation or retirement

- (1) Where a worker—
  - (a) resigns, otherwise than in the circumstances referred to in subsection (2); or
  - (b) retires on completion of not less than five years' continuous service under an employer, compensation for length of service shall be payable to such worker, in addition to the wages and other benefits earned, in accordance with [section 47\(2\)\(b\)](#).
- (2) Compensation shall not be payable to a worker under subsection (1) where the worker resigns during a period of suspension from service for disciplinary reasons, or where the circumstances of the resignation are such that serious disciplinary action could have been taken against the worker by the employer.
- (3) Where a worker who has completed not less than five years' continuous service dies while in employment, compensation for length of service shall be payable to the estate or succession of the worker or in accordance with a declaration made by the worker under [section 70A](#), as the case may be, in addition to the wages and other benefits earned by the worker, in accordance with [section 47\(2\)\(b\)](#).

*[subsection (3) amended by section 4 of [Act 38 of 2021](#)]*

## 63. Payment in lieu of notice

Wherever notice is required to be given under this Part, payment corresponding to the period of notice required or to such part of it as is not worked may be made in lieu.

### 63A. Interest payable

Where compensation is payable to a worker in respect of termination of employment under the provisions of this Part, interest on the amount of such compensation shall be payable at such rate as may be prescribed by the Minister, for the period between the date on which such compensation becomes payable and the date of actual payment. For the purpose of this section compensation becomes payable upon the determination of the competent officer, the ruling of the Minister or the Tribunal, as the case may be.

## Part IX – Miscellaneous provisions

### 64. Disputes

Wherever a dispute, other than one for which the grievance procedure is expressly provided under other provisions of this Act, arises between employer and worker and internal dispute procedures, if any, have been exhausted without agreement, either party to the dispute may initiate the grievance procedure.

### 65. Appeals and reviews

- (1) Subject to subsection (2), wherever an employer or worker is aggrieved by an authority, approval, decision or determination of a competent officer, the employer or the employers' organization on behalf of the employer, the worker or the Union on behalf of the worker, may appeal against it to the Minister.
- (2) An appeal under subsection (1), other than an appeal against a determination of the competent officer consequent upon initiation of the negotiation or grievance procedure, shall be lodged with the Chief Executive within 14 days or such other period as may be prescribed after the date on which the authority, approval, decision or determination was given.
- (3) Where the competent officer who gave the original authority, approval, decision or determination is the Minister, the right of appeal under subsection (1) gives place to a right of review by the Minister.
- (4) Upon an appeal or review under this section, the Minister may consult with the Employment Advisory Board before giving the ruling on such appeal or review.
- (5) A reference in this Act to the authority, approval, decision or determination of a competent officer is to be construed, where the context so admits, as reference to that authority, approval, decision or determination as confirmed, reversed or amended by a ruling of the Minister upon an appeal or review.
- (6) Subject to subsection (8), a ruling of the Minister under this section shall be given within 42 days or such longer period as may be prescribed after the date of lodgement of the appeal or of the application for review, as the case may be.
- (7) A ruling of the Minister made under this section shall not be vitiated solely on the ground that it was not given within the period specified in subsection (6).
- (8) The Minister may revoke a ruling referred to in subsection (6) within a period of 14 days after the date of the ruling and give a new ruling if he is satisfied that in existence at the time when the original authority, approval, decision or determination was given, were not made known to the competent officer or the Minister and that it is just and equitable that a new ruling be given. The Minister shall hear the parties concerned before giving the new ruling.
- (9) In any proceedings for an offence under [section 76\(1\)](#) for failing to comply with a decision of the Minister made under this section, a certificate purporting to be issued by the Minister shall be evidence of the facts stated therein.

**66. Retirement age**

- (1) A person who has attained retirement age shall not, without the written approval of the competent officer or after such approval has been withdrawn, remain in the employment of, or take up employment with, another person.
- (2) An employment shall not employ a person who has reached retirement age unless that person has the written approval of the competent officer and such approval has not been withdrawn.
- (3) Approval shall not be given under this section wherever there is a younger person suitably qualified to replace a person who has reached retirement age.
- (4) A younger person aggrieved by an approval given under this section may appeal to the Minister under [section 65](#).

**67. Non-Seychellois workers**

Non-Seychellois workers, not exempt from the provisions of this Act, shall enjoy the same terms and conditions of employment as are applicable to Seychellois workers but may be given such additional benefits and privileges as the competent officer may authorise.

**68. Employer to keep register of workers**

Every employer shall keep a register of the workers and the register shall contain in respect of, each worker the following information:

- (a) the name, date of birth, national identity number and address;
- (b) the occupation or previous occupation, if any;
- (c) the date of engagement;
- (d) the wages payable and any additional benefits or advantages;
- (e) any disciplinary offences committed, the date thereof and the disciplinary measure taken, if any;
- (f) any qualification attained by the worker during the employment of the worker under that employer;
- (g) such other particulars as may be prescribed.

**69. Certificate of employment**

An employer shall, not more than 21 days after the date of the termination of a worker's contract of employment, give to the worker a certificate of employment which shall contain such particulars as may be prescribed.

**70. Probation**

An employer shall not employ a worker on probation—

- (a) except under a contract of continuous employment when the worker is first employed by the employer; and
- (b) for longer than 6 months unless authorized by the competent officer.

**70A.**

Notwithstanding any law, a worker may make a declaration stipulating that benefits arising out of the worker's employment with his employer and standing to the worker's credit with his employer on the

date of the worker's death be paid or distributed by his employer upon the worker's death to beneficiaries designated by the worker in the declaration made by the worker.

*[section 70A inserted by section 5 of [Act 38 of 2021](#)]*

## 71. Regulations

The Minister may make regulations—

- (a) prescribing anything which is required to be prescribed under this Act;
- (b) prescribing forms for the registers to be kept under this Act;
- (c) prescribing the records and returns to be kept or produced by employers;
- (d) prescribing fees and charges in respect of any matter done under this Act;
- (e) providing for the training of trainees and for a training levy on employers;
- (f) prescribing allowances payable to a trainee and the manner in which the allowances are payable;
- (g) qualifying, modifying or excepting provisions of this Act as regards their application to workers in outer islands and their employer;
- (h) prescribing the manner, circumstances and forms for a worker to make a declaration for the payment or distribution by an employer of benefits of a worker on the death of the worker to a designated beneficiary;

*[paragraph (h) inserted by section 6(a) of [Act 38 of 2021](#)]*

- (i) amending the Schedules;

*[paragraph (i), previously paragraph (h), renumbered by section 6(b) of [Act 38 of 2021](#)]*

- (j) generally, for the better carrying into effect the purposes and provisions of this Act.

*[paragraph (j), previously paragraph (i), renumbered by section 6(b) of [Act 38 of 2021](#)]*

## Part X – Administration

### 72. Responsibility for administration

- (1) Subject to such exceptions as the Minister may impose in relation to any Part or to any provision of this Act and subject to the control and directions of the Minister, the Chief Executive is responsible for the general administration of this Act.
- (2) The Chief Executive may, subject to the approval of the Minister, delegate any of the functions which the Chief Executive is required to perform under this Act to any other person.

### 72A. Tripartite consultative body

- (1) The Minister may, in consultation with the organizations of workers and employers, appoint a National Consultative Committee on Employment consisting of representatives of such organizations and the Government to advise the Minister on matters relating to industrial relations and any specific matter referred to the Committee by the Minister.
- (2) The members of the Committee shall be appointed by notice in the *Official Gazette* for a term of 3 years and shall be eligible for reappointment.
- (3) The Minister shall, by regulations, provide for the procedure for the conduct of business by the Committee.
- (4) The members of the Committee shall be paid such allowances by the Minister may determine.

**73. Employment Advisory Board**

- (1) The Minister shall establish an Employment Advisory Board.
- (2) Schedule 3 has effect with respect to the Employment Advisory Board, its composition, panel, quorum, functions and otherwise.

**73A. Employment Tribunal**

- (1) There is hereby established a Tribunal which shall be known as the Employment Tribunal.
- (2) Schedule 6 has effect with respect to the Employment Tribunal, its composition, jurisdiction, powers and otherwise

**74. Competent offices and presumption of authority**

- (1) The Minister may authorize any person to act as a competent officer under this Act, and any person so acting is presumed to have been duly authorized.
- (2) Notwithstanding the presumption under subsection (1), the Chief Executive shall issue to every person authorized by the Minister to act as a competent officer a certificate of authority so to act.
- (3) No evidence of authority under subsection (2) is required where the Minister or the Chief Executive, when so authorized by the Minister, acts as a competent officer.

**75. Exercise of powers**

- (1) Subject to subsection (2), in the exercise of the functions under this Act a competent officer may—
  - (a) at any time enter any office or work place or site and make any examination or enquiry which the officer considers necessary in order to satisfy the officer that this Act is being complied with, and may take extracts or make copies from any books, records or other documents and, if this is not practicable, remove the same upon giving a receipt therefore;
  - (b) interrogate any employer or worker on any matter concerning the application of this Act;
  - (c) require the production by the employer for examination of any register, record, return or other document the keeping of which is prescribed by or under this Act, copy the same or take extracts therefrom;
  - (d) require an employer to make any worker available for interrogation;
  - (e) require an employer to furnish projections of the future activities and of the manpower needs of the employer;
  - (f) require an employer to furnish information relating to the plans for training the workers of the employer and furnish reports on the training given to them;
  - (g) require an employer to furnish any information relevant to manpower;
  - (h) give any directions or advice necessary to ensure compliance with this Act.
- (2) A competent officer, other than the Minister or the Chief Executive shall, in the exercise of the functions under subsection (1), if so requested by any person affected thereby, produce the certificate of authority referred to in [section 74\(2\)](#).

## Part XI – Offences, penalties and prosecution

### 76. Offences

- (1) A person who—
- (a) fails to produce or submit any record, document or return or furnish any information when required under this Act or by a competent officer;
  - (b) furnishes false or misleading information to a competent officer or any other person under this Act;
  - (c) intentionally obstructs, hinders or delays a competent officer or any other person in the exercise of the functions of the officer under this Act;
  - (d) without reasonable excuse, fails to comply with any directions given by a competent officer or any conditions attached to any permit issued under this Act;
  - (e) fails to inform or notify a competent officer or any other person in accordance with the provisions of this Act;
  - (f) without reasonable excuse, fails to comply with a decision of the Minister made on a review or appeal under [section 65](#);
  - (g) fails to comply with an order under [section 61\(2\)\(a\)\(iii\)](#) or [section 61 \(2\)\(b\)\(ii\)](#) or contravenes [section 66\(1\)](#);
  - (h) alters or modifies any record, document or other return issued by any person, or required to be kept, under this Act,
  - (i) contravenes [section 46A\(3\)](#) or [46B](#) commits an offence,
- is guilty of an offence.
- (2) An employer who—
- (a) contravenes [section 5\(A\)](#), [section 8\(1\)](#), [section 9\(1\)](#), (2) or (3), [section 10\(2\)](#), [section 11\(1\)](#) or (2), [section 12\(1\)](#) or (2), [section 16\(1\)](#) or (3), [section 17A](#), [section 18\(1\)](#) or (2), [section 25\(2\)](#), [section 29\(1\)](#), [section 34\(1\)](#), [section 35\(1\)](#), [section 50\(4\)](#), [section 57\(5\)](#), [section 58\(4\)](#), [section 66\(2\)](#), [section 69](#), or [section 70](#); or
  - (b) fails to give to a worker a copy of the contract of employment under [section 21\(2\)](#) or [22\(3\)](#);
  - (c) subject to subsection (6), employs or retains in employment a worker without intending to pay or without having reasonable grounds for believing that the employer can pay the wages of the worker as they become payable;
  - (d) without reasonable excuse, fails on demand to pay in accordance with [section 32\(2\)](#) or (3) any wages due to a worker;
  - (dd) fails to pay the thirteenth month pay under [section 46C](#);  
*[section 76(2)(dd) inserted by Act 24 of 2016 w.e.f. 29 December 2016]*
  - (e) makes any deduction from wages other than that authorized under [section 33](#) or [section 61\(2\)\(b\) \(ii\)](#) or contrary to [section 42\(2\)](#);
  - (f) deducts more than the amount authorized under [section 42\(1\)](#) from the wages of a worker;
  - (g) pays a worker, other than a trainee defined under [section 27\(a\)](#) or (c), a wage less than the national minimum wage;

- (h) pays a trainee defined under [section 27\(b\)](#) an allowance less than the national minimum wage;
  - (i) in the case where a mandatory wage or allowance is prescribed, pays a worker a wage or allowance other than the mandatory wage or allowance;
  - (j) fails to provide a worker with any of the applicable conditions of employment prescribed under [section 40\(1\)\(b\)](#);
  - (k) terminates a contract contrary to [section 47\(1\)](#);
  - (l) fails to comply with a determination of the competent officer in accordance with [section 61\(2\)\(a\)\(ii\)](#) or [section 61\(2\)\(b\)\(i\)](#);
  - (m) fails to pay any compensation due under [section 62](#);
  - (n) knowingly gives or causes to be given a false certificate of employment to a worker,
  - (o) fails to make a worker available for interrogation by a competent officer under [section 75](#),  
is guilty of an offence.
- (3) Where an employer is charged with an offence in relation to [section 51\(1\)](#) the burden of proving that the employer has complied with that section shall be on the employer.
- (4) A person upon whom there lies an obligation under Part VI to initiate the negotiation procedure and who fails to do so is guilty of an offence.
- (5) A person who, having initiated the negotiation procedure under Part VI, fails or refuses to comply with or is in breach of any condition of any determination of the competent officer consequent upon the negotiation procedure is guilty of an offence.
- (6) Wherever initiation of negotiation procedure is required under Part VI, it is a defence for an employer charged with an offence under subsection (2)(c) to show that as soon as the employer realized the employer would not be able to meet the wages of a worker the employer initiated the negotiation procedure;
- (7) Where an employer is convicted of an offence under subsection (2)(e) to (i) for having paid a lesser wage or allowance than that which the employer ought to have paid, the court shall order the employer to pay to the worker the difference between the amount paid and that which ought to have been paid.

## 77. Penalties

- (1) A person who is convicted of an offence under [section 76](#), other than an offence specified in subsection (2) of this section, is liable to a fine of R.20,000.
- (2) A person who is convicted of an offence under [section 76\(2\)\(a\)](#) in relation to [section 57\(5\)](#) or under [section 76\(1\)\(f\)](#), [76\(1\)\(i\)](#), (4) or (5) is liable to a fine of R.40,000.
- (3) Where an offence of which a person is convicted under subsection (1) or subsection (2) is of a continuous nature and that offence is continued after a conviction therefore, the person so convicted is guilty of a further offence for everyday on which the offence is so continued by the person and is liable to a mandatory daily penalty of R.400 in addition to any penalty imposable for the further offence.
- (4) Notwithstanding subsection (1),(2) or (3) or any other written law, where an offence of which an employer is convicted under this Act and in connection with that offence moneys, whether consisting of wages, compensation, benefits earned, payment in lieu of notice or otherwise, are due and payable to another person in respect of whom the offence has been committed, the court, shall, in addition to any penalty imposable under this section, order the person convicted to pay to the other person the moneys due.

## 78. Prosecution

- (1) Without prejudice to [section 72\(1\)](#), no prosecution for an offence under this Act is commenced without the consent in writing of the Chief Executive.
- (2) A prosecution for an offence under this Act may be conducted by a competent officer before the Tribunal
- (3) Nothing in this section derogates from the powers of the Attorney-General in respect of the prosecution of criminal offences.
- (4) Wherever any person is convicted of an offence under this Act and in connection with that offence moneys, whether consisting of wages, compensation, benefits earned, payment in lieu of notice or otherwise, are due and payable to another person in respect of whom the offence has been committed, the Tribunal, shall, in addition to any penalty imposable under this section, order the person convicted to pay to the other person the moneys due.

## 79. Determination of competent officer conclusive

In any proceedings for an offence under this Act which relate to an authority, approval, decision or determination of a competent officer, that authority, approval, decision or determination shall, subject to any orders made in the exercise of the supervisory jurisdiction of the Supreme Court, not be called in question and shall, if given under the hand of the Minister or Chief executive, be conclusive evidence of the same without proof being given of the signature of the signatory.

## 80. Employer's liability for agents

- (1) Whenever a manager, agent or another worker of any employer does or omits to do an act which it would be an offence under this Act for the employer to do or omit to do unless it is proved that—
  - (a) in doing or omitting to do that act, the manager, agent or other worker was acting without the connivance and permission of the employer;
  - (b) all reasonable steps were taken by the employer to prevent any act or omission of the kind in question; and
  - (c) it was not under any condition or in any circumstances within the scope of the authority, or in the course of the employment, of the manager, agent or worker to do or omit to do the act, whether lawful or unlawful, of the character of the act or omission charged,the employer shall be presumed to have done or omitted to do that act and be liable to be convicted and sentenced in respect of it.
- (2) Whenever any manager, agent or other worker of an employer does or omits to do an act, which it would be an offence under this Act for the employer to do or omit to do, the manager, agent or other worker is liable to be convicted and sentenced in respect thereof as if the manager, agent or other worker were the employer and may be so convicted and sentenced in addition to the employer.

## Part XII – Transitional

### 81. Transitional

- (1) Notwithstanding the repeal of the Employment Act by this Act, any statutory instrument made under that Act and in force immediately before the commencement of this Act shall continue in force until amended or revoked by a statutory instrument made under this Act.

### 81A. Suspension of negotiation procedure

- (1) Notwithstanding any other provision to the contrary in this Act, where—
  - (a) an employer initiates, during the period from 20th March 2020 to 30th June 2020, the negotiation procedure for—
    - (i) the reduction, or deferment of payment, of wages of a worker;
    - (ii) the temporary lay-off of a worker; or
    - (iii) terminating the contract of employment of a worker on the ground of redundancy; and
  - (b) the competent officer, prior to 1st July 2020 approves, as the case may be—
    - (i) the reduction, or deferment of payment, of wages of a worker;
    - (ii) the temporary lay-off of a worker; or
    - (iii) the termination of the contract of employment of a worker on the ground of redundancy; any notice given by an employer to a worker, on the basis of such approval shall not take effect prior to 1st July, 2020.
- (2) Section 39A and subsection (1) shall be deemed to have come into operation on 20th March, 2020.
- (3) Subsection (1) shall not apply to the negotiation procedure under sections 48 and 51 in respect of a non-Seychellois worker, or a worker in respect of whom the employer has not received full salary support from the Government.
- (4) Any negotiation procedure initiated or applied for prior to 20th March, 2020, shall remain valid.

*[section 81A inserted by section 2(c) of Act 20 of 2020 w.e.f. 1 June 2020]*

## Schedule 1 (Sections 47, 48, 51)

### Negotiation procedure

#### Part I

#### A – Restrictions on termination of contract (section 47)

1. (1) Where an employer wishes to terminate a contract of employment otherwise than under section 57, the employer shall, not less than 42 days before the employer intends to give notice of termination to any worker, notify the Union and the Chief Executive.
- (2) The period of 42 days referred to in sub-paragraph (1) may, in exceptional circumstances and at the discretion of the Chief Executive, be reduced.
- (3) The notification under sub-paragraph (1) shall specify—
  - (a) the reason for the proposed termination;
  - (b) the number of workers concerned;
  - (c) the names, ages, occupation, date of engagement and wages of the workers concerned;
  - (d) whether the proposed termination relates to an activity in a particular sector of the business or to the business as a whole;
  - (e) the criteria used for selecting the workers contracts are to be terminated.

- (4) The employer shall also furnish any further information which the competent officer may request.
2. Upon receipt of the notification and of any additional information requested under paragraph 1(4), the competent officer registers the notification and issues to the employer a certificate of registration.
3.
  - (1) As soon as possible after the date of registration of the notification and in any case not later than 7 days therefrom, the competent officer shall invite the Union, the employer or the employer's organization to which the employer may belong, for consultations with a view to exploring and agreeing on how the proposed terminations may be avoided or their effects minimized.
  - (2) Notwithstanding sub-paragraph (1), where the reason for the proposed termination of a contract is a personal one in the sense that it relates to the character, competence, loyalty or other attribute of the worker, the competent officer shall invite the worker's participation to consultations in pursuance of sub-paragraph (1).
4.
  - (1) The competent officer shall keep a record of the statements made during the consultations held pursuant paragraph 3, and shall file all documents and evidence produced by the parties and any written submission they may make.
  - (2) Following the conclusion of consultations the competent officer considers the case and makes the determination of the officer.
  - (3) A determination by the competent officer under sub-paragraph (2) shall be made within 14 days after the date of registration of the notification.
5. The worker, the Union or, the employer may, not later than 14 days after service of a determination made under paragraph 4(3), appeal to the Minister against that determination.
6. No action shall be taken by the employer in connection with the proposal termination (including giving notice to a worker of termination) until 21 days has elapsed following a determination under paragraph 4(2) or until the competent officer fails to make a determination within the time allocated under paragraph 4(3).
7. This procedure is also subject to Part III of this Schedule.

### **B – Lay-offs under section 48**

The procedure laid out in paragraph 1 to 7 Part 1A of this Schedule applies, *mutatis mutandis*, to the case of lay-offs subject to the following modifications—

- (a) the period referred to in paragraph 1(1) of Part 1A does not apply and notification may be given at any time before the proposed lay-offs;
- (b) consultations as under paragraph 3 of Part 1A shall take place within 3 working days after the date or registration of the proposed lay-offs;
- (c) a determination by the competent officer as under paragraph 4(3) of Part 1A shall be made within 14 days after the date of registration.

### **C – Redundancy of worker under section 51**

1. The employer shall notify the Chief Executive 21 days before the employer intends to give notice of redundancy to a worker of the fact specifying the particulars referred to in paragraph 1(3) under the heading "A. Restrictions on termination of contract".
2. The Competent Officer shall register the notification, hold consultations and make a determination within the said period of 21 days. The employer may give notice to the worker after 72 hours have elapsed from the date of the determination.

3. The worker, the union or the employer may appeal within 7 days against the determination of the competent officer to the Minister who shall give his decision within 30 days.
4. Where, upon an appeal—
  - (a) the redundancy is approved, the contract of employment of the worker shall be terminated with notice, the period of notice commencing 72 hours after the date of the competent officer's determination;
  - (b) the redundancy is not approved, the contract of employment of the worker shall continue to have effect.
5. Workers who are being made redundant shall be given paid leave for half a day for each week during the period of notice to enable them to secure employment.

### **Part II – Grievance procedure (Sections 53(5), 61, 64)**

1. In this Part "worker" includes an unemployed person.
2.
  - (1) Wherever an employer or worker is empowered by or under this Act to initiate the grievance procedure, the employer or worker may, within 14 days of becoming aware of the event, act or matter giving rise to the grievance, register a grievance with the competent officer furnishing the officer with all the information the officer may require.
  - (2) Where there exist internal procedures for the resolving disputes between employer and worker or where the information required under subparagraph (1) is not furnished to the competent officer, the officer may suspend registration of the grievance until satisfied that internal procedures have been exhausted or have proven inconclusive or until the officer has at hand the information required.
  - (3) An employer or worker who fails to register a grievance within the time specified under subparagraph (1) loses the right to do so, but the competent officer, if satisfied that the failure to do so is not attributable to the fault of the employer or worker as the case may be or if the officer has himself suspended registration under subparagraph (2), shall allow registration out of time.
3. This procedure is also subject to Part III of this Schedule.
4. A competent officer shall complete mediation within 28 days from the date of registration of the grievance

### **Part IIA – Special provisions relating to non-Seychellois workers**

1. An employer who terminates a contract of employment of a non-Seychellois worker who has committed a serious disciplinary offence shall notify the Chief Executive of the termination within 48 hours thereof and shall supply the Chief Executive with all the relevant particulars.
2. A non-Seychellois worker aggrieved by the termination may initiate the grievance procedure within 7 days of becoming aware of the grievance.
3. The registration of the grievance may be suspended if there are internal procedures of the employer for resolving disputes and they have been set in motion.
4. If a non-Seychellois worker fails to lodge a grievance within 7 days he will lose the right to do so, but the competent officer shall, if satisfied that such failure is not attributable to the fault of the worker or if the officer had himself suspended registration, allow the registration out of time.
5. A competent officer shall complete mediation within 7 days from the date of registration of the grievance
6. The non-Seychellois worker or employer may, within 7 days of receiving the determination of the competent officer, appeal to the Minister.

7. An employer of a non-Seychellois worker shall continue to provide such worker with food and shelter while the grievance of the worker is being dealt with by the competent officer or the Tribunal.
8. If an agreement is reached at mediation the employer may subject to paragraph 9, cease to provide food and shelter to the worker.
9. Where the mediation agreement provides that decides that the employer must pay employment benefits to the worker, the employer shall be liable to provide food and shelter to until the worker is paid such benefits;
10. Where the employer does not pay employment benefits according to the mediation agreement and enforcement procedure before the Tribunal is commenced by the competent officer,, the obligation to provide food and shelter to the worker shall come to an end.
11. Whenever the employer's obligation to provide food and shelter ends, the employer shall provide air tickets to the non-Seychellois worker to return to the worker's country of origin. The employer may however, provide air tickets at any time to the worker at his request.

### **Part III – General provisions applicable to Parts I and II**

1. The absence of any person invited to consultation under Part I or Part II of this Schedule from those consultations does not vitiate the procedures.
2. Wherever possible the consultations should be joint but the competent officer may hold separate consultations.
3.
  - (1) A party to any consultation under Part I or Part II of this Schedule may attend in person and be accompanied by a representative.
  - (2) Notwithstanding sub-paragraph (1) where the number of workers concerned by either procedure exceeds 3, there may not be more than 3 representatives on their behalf.
4. Any right of an employer or worker under Part I or Part II of this Schedule may, at the request of the employer or worker, be exercised on behalf of the employer or worker by the employers' organization or the Union respectively.
5. An employer's organization shall only be invited to consultations under Part I or Part II of this Schedule where—
  - (a) the employer concerned so requests; or
  - (b) the competent officer considers its presence necessary.

## **Schedule 2 (Sections 52 and 55)**

### **Part I – Disciplinary offences**

A worker commits a disciplinary offence wherever the worker fails, without a valid reason, to comply with the obligations connected with the work of the worker and more particularly, *inter alia*, where the worker—

- (a) within a period of 12 months fails to observe working hours on one or not more than two occasions;
- (b) within a period of 12 months fails to report for work on one or not more than two occasions;
- (c) is absent without permission from the undertaking or from the post of the worker during working hours;
- (d) fails to obey reasonable orders or instructions given by the employer or representative of the employer.
- (e) makes any illicit or unauthorized use of the property or equipment of the undertaking;

- (f) negligently causes minor damage to the property of the undertaking;
- (g) fails to keep a secret connected with the work of the worker, the production of goods or the provision of services, where required by law or by the rules of the undertaking to keep it;
- (h) fails to comply with the rules and regulations of the undertaking;
- (i) commits an offence under this Act other than an offence referred in Part II (j) of this Schedule;
- (j) appears at work while under the influence of alcohol or dangerous drugs or consumes alcohol or dangerous drugs while at work or within the undertaking;
- (k) knowingly makes false statements during investigation of accidents at work or of breaches of discipline.
- (l) wilfully or intentionally apply for special leave under the Employment (Coronavirus Special Leave) (Temporary) Regulations, 2020, in circumstances where the worker is not eligible for special leave.

[subparagraph (l) inserted by regulation 9(1)(a) of [SI 57 of 2020](#) w.e.f. 30 March 2020]

## Part II – Serious disciplinary offences

A worker commits a serious disciplinary offence wherever, without a valid reason, the worker causes serious prejudice to the employer or employer's undertaking and more particularly, *inter alia*, where the worker—

- (a) fails repeatedly to observe working hours or is absent from work without authorization on 3 or more occasions within a period of 12 months.
- (b) is absent from work without justification for a whole day on 3 or more occasions within a period of 12 months;
- (c) fails repeatedly to obey reasonable orders or instructions given by the employer or representative of the employer including orders or instructions relating to the use of care of protective equipment; and
- (d) fails to keep a secret connected with the work of the worker, the production of goods or the provision of services, where the failure results in serious prejudice to the undertaking or the general interests of the Republic;
- (e) willfully or intentionally damages the property of the undertaking thereby causing a reduction or stoppage of production or serious prejudice to the undertaking;
- (f) is unable to carry out the duties of the worker due to the effect of alcohol or dangerous drugs or refuses to comply with a requirement of an employer under section 53A;
- (g) commits any offence involving dishonesty, robbery, breach of trust, deception or other fraudulent practice within the undertaking or during the performance of the work of the worker;
- (h) in the course of the employment of the worker assaults, or inflicts bodily injury upon a client of the employer or another worker;
- (i) commits any active or passive bribery or corruption;
- (j) commits an offence under this Act whereby the worker causes serious prejudice to the employer or employer's undertaking;
- (k) does any act, not necessarily related to the work of the worker, which reflects seriously upon the loyalty or integrity of the worker and causes serious prejudice to the employer's undertaking;
- (l) shows a lack of respect to, insults or threatens a client of the employer or another worker whether it be a superior, a subordinate or a colleague.
- (m) willfully, repeatedly and without justification fails to achieve a normal output as fixed in accordance with standards applicable to the worker's work;

- (n) knowingly makes false statements in an application for special leave under the Employment (Coronavirus Special Leave) (Temporary Measures) Regulations, 2020.

*[subparagraph (n) inserted by regulation 9(1)(b) of SI 57 of 2020 w.e.f. 30 March 2020]*

### **Part IIA – Special provisions relating to non-Seychellois workers**

1. An employer who terminates a contract of a non-Seychellois worker who has committed a serious disciplinary offence shall notify the Chief Executive of the termination within 48 hours thereof and shall supply the Chief Executive with all the relevant particulars.
2. A non-Seychellois worker aggrieved by the termination may initiate the grievance procedure within 7 days of becoming aware of the grievance.
3. The registration of the grievance may be suspended there are internal procedures of the employer for resolving disputes and they have been set in motion.
4. If a non-Seychellois worker fails to lodge a grievance within 7 days he will lose the right to do so, but the competent officer shall, if satisfied that such failure is not attributable the fault of the worker or if the officer had himself suspended registration, allow the registration out of time.
5. A competent officer seized of a grievance shall within 7 days after registration of the grievance, invite the worker, the union, if any, the employer and employers organization, if any, for consultation. A record of the consultations shall be kept and a determination shall be made within 72 hours after the end of consultations.
6. The non-Seychellois worker or employer may, within 7 days *bring the matter before the Tribunal if no settlement is reached at mediation* \* of receiving the determination of the competent officer appeal to the Minister.
7. An employer of a non-Seychellois worker shall continue to provide such worker with food and shelter while the grievance of the worker is being dealt with until the competent officer makes the determination
8. Upon the determination of the competent officer, the employer may, subject to paragraph (9), cease to provide food and shelter to the worker whether an appeal against the determination is lodged by the worker or not.
9. Where—
  - (a) the competent officer decides that the employer must pay employment benefits to the worker, the employer shall be liable to provide food and shelter to the worker until the worker is paid such benefits;
  - (b) where an appeal is lodged by the employer, the employer shall continue to provide food and shelter until the determination of the appeal.
10. If the employer does not appeal, does not pay the said employment benefits and enforcement procedure before the courts is commenced by the Department, the obligation to provide food and shelter to the worker shall come to an end.
11. Whenever the employer's obligation to provide food and shelter ends, the employer shall provide air tickets to the non-Seychellois worker to return to the worker's country of origin. The employer may however, provide air tickets at any time to the worker at his request.

*Note: The words in italics were inserted by Act 21 of 2008; they remain italicised because they do not make sense in the context of the pre-existing text.*

### Part III – Disciplinary measures (Section 55)

In the event of the commission of a disciplinary offence any one or more of the following disciplinary measures may be taken—

- (a) a written warning which may be copied to the Union;
- (b) recovery of cost for any damage done to, or loss of, the property of the employer;
- (c) non-payment of wages for any unauthorized absence from work; provided that an employer may deduct the equivalent of 3 days wages for each day of unauthorized absence from work for each second or subsequent unauthorized absence within a period of 12 months;
- (d) withholding of annual merit increments;
- (e) redeployment;
- (f) demotion;
- (g) suspension from work without pay for a period of up to 14 days;
- (h) termination of employment with notice or payment in lieu of notice;
- (i) termination of employment without notice ie instant dismissal without payment of compensation.
- (j) such other measures as the Minister may prescribe.

### Schedule 3 (Section 73)

#### Employment Advisory Board

1. In this Schedule the "Board" means the Employment Advisory Board.
2. The Minister may, by notice in the *Gazette*, appoint up to 15 persons from among responsible members of the community to be members of the Board.
3. Appointments under paragraph 2 are for two years and are renewable.
4. The functions of the Board are to advise the Minister whenever a matter is referred to it by the Minister under this Act.
5.
  - (1) When exercising its functions under paragraph 4 with respect to any specific matter referred to it, the Board consists of a panel of 3 members selected from among the Board's membership by the Chief Executive or person authorized by the Chief Executive.
  - (2) The members of the panel shall select one member to be the panel's chairman for the sitting relating to the specific matter.
6. The competent officer shall place before the panel of the Board all the facts and submissions pertinent to the matter in question together with his decision or determination with respect of that matter.
7. Whenever a panel as constituted under paragraph 5 sits, it regulates its own proceedings.
8. Where the advice to be tendered to the Minister by a panel as constituted under paragraph 5 with respect to any matter referred to it is not unanimous, each member of the panel shall tender a separate advice.

### Schedule 4 (Section 28)

#### The National Vocational Training Board

1. In this Schedule, the "Board" means the National Vocational Training Board;

2. The Board shall consist of the following members—
  - (a) the President as chairman unless the President appoints another person as chairman by notice in the *Gazette*.
  - (b) such other members as the President may, by notice in the *Gazette*, appoint for such periods as may be specified in the notice.
3. The Board meets whenever its chairman summons a meeting.
4. The Board regulates its own proceedings.

## **Schedule 5 (Section 2)**

### **Outer islands**

Ile Plate

Coëtivy

Amirantes Group:

Rémire

D'Arros

Desroches

Etoile

Boudeuse

Marie-Louise

Denoeufs

African Banks:

Bancs Africains

Ile du Sud

St. Joseph's Atoll

St. Joseph

Ile au Fouquets

Ressource

Petit Carcassaye

Grand Carcassaye

Benjamin

Bancs Ferrari

Cheins

Pelicans

Vars

Ile Paul

Banc de Sable

Bancs aux Cocos  
Ile aux Poules  
Poivre Atoll:  
Poivre  
Florentin  
Ile du Sud  
Alphonse and St. Francois Atolls  
Alphonse  
Bijoutier  
St. Francois  
Farquhar Group:  
Farquhar Atoll:  
Ile du Nord  
Ile du Sud  
Manahas Nord  
Manahas Milieu  
Manahas Sud  
Ile aux Coëlettes  
Lapins  
Ile du Milieu  
Déposés  
Bancs de Sable  
Providence Atoll:  
Providence  
Bancs Providence  
St. Pierre  
Aldabra Group:  
Aldabra Atoll:  
Grande Terre  
Picard  
Polymnie  
Malabar  
Ile Michel  
Ile Esprit  
Ile aux Moustique

Ilot Parc  
Ilot Emile  
Ilot Yangué  
Ilot Magnan  
Ile Lanier  
Champignon des Euphrate  
Grand Mentor  
Grand Ilot  
Gros Ilot Gionne  
Gros Ilot Sésame  
Heron Rock  
Hide Island  
Ile aux Aigrettes  
Ile aux Cédres  
Iles Chalands  
Ile Fangame  
Ile Héron  
Ile Michel  
Ile Suacco  
Ile Sylvestre  
Ile Verte  
Ilot Déder  
Ilot du Sud  
Ilot du Milieu  
Ilot du Nord  
Ilot Dubois  
Ilot Macoa  
Ilot Salade  
Middle Row Island  
Noddy Rock  
North Row Island  
Petit Mentor  
Petit Mentor Endans  
Petit Ilots  
Pink Rock

Table Ronde

Cosmoledo Atoll:

Menai

Ile du Nord

Ile Nord-Est

Ile du Trou

Goëlettes

Grand Polyte

Petit Polyte

Grand Ile (Wizard)

Pagode

Ile du Sud-Ouest

Ile aux Moustiques

Ile Baleine

Ile aux Chauve-Souris

Ile aux Macaques

Ile aux Rats

Ile du Nord-Ouest

Ile Observation

Ile Sud-Est

Hot la Croix

Astove

Assumption

## **Schedule 6 (Section 73A)**

### **Employment Tribunal**

1. (1) (a) The Chairperson of the Tribunal shall be a Magistrate nominated by the Chief Justice.  
(b) The Minister shall appoint two Vice-Chairpersons who shall be legal practitioners.
- (2) The Minister shall appoint not more than twelve other members to serve on a part time basis from a panel drawn up after consultations with the representatives of employers' organizations and trade unions.
- (3) The names of the members shall be published in the *Gazette*.
- (4) A member shall hold office for a term of three years and may be reappointed for a further term.
- (5) A member of the Tribunal shall not take part in any hearing in relation to a matter in which the member has a direct or indirect pecuniary interest.
- (6) A member of the Tribunal or any other person under the direction of the Tribunal has immunity in respect of anything which is done or purported to be done in good faith in pursuance of this Act.

2. The allowances of the members shall be as may be prescribed by the Minister.
3.
  - (1) The Tribunal shall have exclusive jurisdiction to hear and determine employment and labour related matters.
  - (2) Without prejudice to the generality of the foregoing, the Tribunal shall hear and determine matters relating to employment and labour that have not been successful at mediation if a party to the dispute instigates such matter.
  - (3) The Tribunal shall not hear and determine any claim relating to damages for personal injuries,
  - (4) For the purposes of this Act, a reference to the Magistrates' Court in any written law in connection with matters under subsection (1) and (2) shall be deemed to be a reference to the Tribunal.
  - (5) This paragraph shall not apply to an appeal in respect of a special leave under regulation 5 of the Employment (Coronavirus Special Leave) (Temporary Measures) Regulations, 2020.  
*[subparagraph (5) inserted by regulation 9(2) of SI 57 of 2020 w.e.f. 30 March 2020]*
4. Any person against whom judgment has been given by the Tribunal may appeal to the Supreme Court subject to the same conditions as appeals from a decision of the Magistrates' Court.
5. The Tribunal shall have powers to—
  - (a) summon any person to appear before it;
  - (b) examine a witness or any person appearing before it on oath;
  - (c) require any person to produce any document which the Tribunal considers relevant.
6.
  - (1) In any proceeding of the Tribunal, there shall always be a representative from the employers' organisation and the trade union sitting as a member provided where parties to a dispute agree the Chairperson or the Vice-Chairperson may sit with only one member.
  - (2) The Tribunal shall where possible sit at least three times a week and laws relating to evidence shall be applicable to witnesses or persons appearing before the Tribunal.
  - (3) Each member of the Tribunal shall have an equal vote and decisions shall be reached by a majority vote.
  - (4) A decision of the Tribunal is enforceable as if it were a decision of the Magistrates' Court.
  - (5) A party before the Tribunal may be represented by a lawyer or by a representative of a trade union or an employers' organization or any other person as the case may be.
  - (6) The Tribunal shall before making any decision—
    - (a) afford the parties the opportunity to be heard;
    - (b) generally observe the rules of natural justice.
  - (7) Notwithstanding the foregoing, the Tribunal shall have power to conduct proceedings in whatever manner it considers most appropriate.
7. At the conclusion of the proceedings the Tribunal shall in addition to any other remedies provided under this Act, award compensation or costs or make any other order as it thinks fit.
8.
  - (1) The Minister shall appoint a Secretary to the Tribunal who shall be responsible—
    - (a) for ensuring the overall smooth running of the Tribunal;
    - (b) for convening the sittings of the Tribunal after consultations with members.
    - (c) for the issuing of summonses and notices on behalf of the Tribunal;
    - (d) for the implementation of decisions made by the Tribunal;

- (e) for the taking of appropriate steps to enable the Tribunal to enforce its orders;
  - (f) for ensuring that orders or directions given by the Tribunal are complied with;
  - (g) for receiving and making payments as the case may be;
- (2) The Secretary of the Tribunal shall be answerable to the Minister.
- (3) The Secretary may waive application fees where an applicant gives valid reasons for not being able to pay such fees.
9. (1) Any person who—
- (a) disobeys without reasonable cause any order of the Tribunal;
  - (b) without reasonable excuse—
    - (i) fails to attend the Tribunal when summoned or required by the Tribunal;
    - (ii) fails to produce a document when required to do so by the Tribunal;
  - (c) disrupts, or misbehaves in the course of, the proceedings of the Tribunal;
  - (d) insults or threatens a member in the performance of his functions;
  - (e) having attended the Tribunal, refuses or fails to answer any question,
- is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine of not more than R40,000.
10. The Minister may make regulations—
- (a) for the better carrying out of the purposes of the Tribunal;
  - (b) regulating the procedure of the Tribunal;
  - (c) prescribing allowances for witnesses, application fees and any other fees in connection with services given by the Tribunal;
  - (d) prescribing forms to be used by the Tribunal.