

S.I. 13 of 1997

INTERNATIONAL TRADE ZONE ACT, 1995

(Act 8 of 1995)

**International Trade Zone (Employment)
Regulations, 1997**

In exercise of the powers conferred by section 14 of the International Trade Zone Act, 1995, the Minister of Finance and Communications hereby makes the following Regulations—

Part I — Preliminary

1. These Regulations may be cited as the International Trade Zone (Employment) Regulations, 1997 Citation

2. In these Regulations—

“Authority” means the Authority for the time being designated or constituted under section 5 of the Act, and means also any person authorised by the Authority.

“compensation” means any amount paid by an employer to a worker in accordance with the stipulations of an employment contract entered into by and between that employer and worker.

“employer” means a person having a worker in the employ of that person or where that person is absent from the zone where the person is operating, the authorised representative in that zone of that person, and means also the manager, agent or other responsible person acting on behalf of the employer;

“outer island” means any or the islands listed in Schedule 5 of the Employment Act; Cap. 69

“retirement age” means the age at which a person qualifies for a retirement pension under the Social Security Act; Cap. 225

Interpreta-
tion

- Cap. 216A "S.I.B.A." means the Seychelles International Business Authority established under the Seychelles International Business Authority Act;
- Cap. 96A "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, earnings or any allowances, 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 of 15 years and above in employment in a zone;
- "zone" has the same meaning as in the Act.

Application
of regulations
and
exemption

3. (1) Subject to subregulation (2), these Regulations apply to a contract of employment entered into for service in a zone.

(2) The Minister may, on the Authority's recommendations, exempt:—

- (a) any contract of employment entered into for service in a zone;
- (b) any person or category of persons employed by a person carrying on business in a zone in respect of that business;
- (c) any business carried on in a zone,

from the operation of all or any of the provisions of these Regulations subject to such conditions as the Minister thinks fit.

(3) Where provision is made under these Regulations for the hearing and determination of any matter in relation to a contract of employment to which these Regulations apply, any remedy or relief granted under the Regulations in respect of that matter shall, subject to the jurisdiction of the Supreme Court, be binding on the parties to the hearing or determination

Part II**Establishment of the Employment Council of the S.I.T.Z.**

4. (1) For the purposes of these Regulations, there shall be established a Council called the Employment Council, consisting of a Chairman appointed under subregulation (2) and such other members as may be appointed under subregulation (3);

Employment
council and
Membership

(2) The Minister shall appoint a person to be the Chairman of the Council, and the Chairman shall hold office during the pleasure of the Minister;

(3) The other members of the Council shall be appointed by the Minister for such term as the Minister may determine and shall consist of the following persons —

- (a) the Managing Director of S.I.B.A or the representative of the Managing Director.
- (b) two persons representing the Ministry responsible for Employment;
- (c) two persons representing the persons carrying on business in the zones;
- (d) one person representing the Minister responsible for the administration of the International Trade Zone Act, 1995;
- (e) two persons representing the workers employed in the zones.

(4) The Council shall meet at such time and place, and as often as may be decided by the Chairman, and four members present at any meeting of the Council shall constitute a quorum for the transaction of any business.

(5) A decision of the majority of the members of the Council present and voting at any meeting of the Council shall be a decision of the Council.

(6) The Chairman of the Council shall have an original as well as a casting vote.

(7) Subject to subregulations (4), (5) and (6), the Council may regulate its own procedure and, in particular, the holding of meetings, the notice to be given of such meetings, the proceedings thereat, the keeping of minutes and the custody, production and inspection of such minutes.

Functions
of the
Council

5. (1) The functions of the Employment Council shall be to advise the Minister and the Authority on all matters relating to employment in the zones.

(2) The Employment Council shall have the power, in the exercise of its functions, to enquire into any matters or things related to the employment conditions in the zone and for this purpose may summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the enquiry.

(3) The Authority may from time to time consult the Employment Council for the proper and effective implementation of these Regulations.

Part III

Formation of Employment Contract

Contracts of
employment

6. (1) A contract of employment may be a contract of continuous employment or for a certain time settled between the parties to that contract.

(2) Where a contract is entered into for a certain time if there is any doubt as to the terms after the services have been rendered and this doubt cannot be resolved by any evidence, the parties shall be deemed to have agreed to reasonable terms having regard to the surrounding circumstances and local practice.

Contracts by
minors

7. Notwithstanding any written law, a contract of employment entered into by a minor of the age of 15 years or above and whereby that minor is, or is to be employed is binding upon the minor if attested by the Authority and by the Minister after consultation with the Employment Council.

8. (1) A contract of employment may be entered into orally or in writing.

Oral or written contracts

(2) Where a contract is in writing it shall be in duplicate and specify as accurately as possible—

- (a) the names of the employer and worker;
- (b) the nature of the employment;
- (c) where a contract is entered into for a certain time or specific project, either the time or the specific project or work on which the worker is to be engaged, as the case may be;
- (d) in the case of a contract of continuous employment, the probation period which shall not be more than six months;
- (e) the zone where the work is to be performed;
- (f) the wages to be paid and the periods of payment and any other benefits including compensation the worker is to receive;
- (g) the number of working hours per week, if any;
- (h) such other particulars as may be prescribed.

(3) Where a contract is in writing it shall be signed or marked by the parties to the contract, and the employer shall retain one copy and give the other copy to the worker.

9. Where the zone is an outer island or a part of an outer island and a worker is detained on it 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 Mahé, to Mahé.

Detention of worker beyond period of contract within a zone

10. Where a contract of employment is in writing, it shall be either in English, French or Creole.

Language of contracts

Trainees

11. (1) Any employer in a zone may employ trainees on a training scheme, untrained workers for which a training course is readily available, and any participants in any apprenticeship schemes.

(2) An employer shall not receive directly or indirectly from persons mentioned in subregulation (1) or on their behalf any payment by way of premium.

(3) The Authority may, in addition to suspending or revoking its licence, order the employer to repay to the trainee or other person by whom the payment was made the sum improperly received as premium.

(4) A trainee is entitled to the same conditions of employment as other workers, except that instead of wages the trainee shall be paid such allowances as the Authority may, in consultation with the Minister, by Notice in the Gazette, prescribe.

(5) For the purposes of these Regulations, the persons mentioned in subregulation (1) are deemed to be trainees.

Part IV

Execution and Performance of Employment Contract

Performance
of
employment
contract

12. A contract of employment shall be binding on the parties to that contract and performed in good faith.

Payment of
wages

13. Unless otherwise provided under these Regulations the wages of a worker are payable to the worker in the currency of the country where payment is made either in cash or, with the worker's consent by cheque or bank transfer.

Authorised
deduction

14. (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 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 amounts as the worker may in writing authorise.

(2) Without prejudice to any right of recovery of any debt due, the total amount of all deductions which, under subregulation (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 third of the wages unless the worker authorises a higher amount.

(3) Notwithstanding subregulation (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 these Regulations.

15. (1) An employer shall keep a pay-book in which shall be entered 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.

Record of
wage
payments

(2) The pay-book shall be kept at the place of employment and shall be available for inspection by the Authority.

16. (1) An employer upon paying the wages of a worker shall keep a record of the payment made together with evidence of receipt of payment of the worker.

Evidence of
payment

(2) Where an employer fails to keep a record as required under subregulation (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 pay book kept under regulation 15(1), the receipt of payment shall contain the particulars of wages together with the deductions made therefrom.

Workers as
privileged
creditors

17. 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 as agreed upon by the employer and the worker;
- (d) compensation due upon termination as agreed upon by the employer and the worker.

Absconding
employer

18. (1) Where an employer or former employer of any worker is about to leave Seychelles—

- (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 these Regulations,

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 Authority may apply to the Supreme Court for an order preventing the employer or former employer from leaving Seychelles.

(2) An order of the Supreme Court under subregulation (2) preventing the employer or former employer from leaving Seychelles shall be sufficient authority for the Director of Immigration from preventing the employer or former employer from leaving Seychelles.

(3) Where the Supreme Court is satisfied that an employer or former employer in respect of whom an order has been made under subregulation (2) 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 subregulation (1).

19. Where a worker —

When wages
not due

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

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

20. (1) The Minister may, after consultation with the Authority, make order prescribing the conditions of employment to be provided for workers by employers.

Orders
relating to
wages and
condition of
employment

(2) Orders made under subregulation (1) 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 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) conditions attaching to the employment of women, trainees and disabled persons;
- (e) generally improved working conditions.

Security for wages

21. The Authority may 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 Authority may demand or as may be prescribed.

Employment benefits

22. (1) Workers under contracts of continuous employment are entitled to all employment benefits under these Regulations from the date of employment until lawful termination of the contracts.

(2) Workers under contracts of employment for a certain time are entitled to all employment benefits up to the day that contract expires or the earlier lawful termination of the contract, as the case may be.

(3) Where the lawful termination 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 V

Termination of Employment Contract

Termination by employer

23. (1) An employer may terminate a contract of employment after giving the necessary notice to the worker.

(2) Without prejudice to the stipulations contained within a contract, 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, at the end of the training period if the trainee fails to satisfactorily complete the training.
- (c) where the worker is a casual or part-time worker, at any time.

(3) Notwithstanding subregulation 5 (1) and (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 Authority so authorizes.

(4) Notwithstanding subregulations (1) and (2), 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 regulation 33(2).

24. (1) A contract is frustrated when it becomes impossible of performance as when, among other things or reasons—

Frustration
of contract

- (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, if any, any additional compensation agreed upon by the employer and the worker.

(2) For the avoidance of doubt it is declared that where a contract is frustrated, the grievance procedure does not apply.

(3) An employer whose business ceases under subregulation (1)(a) shall forthwith notify the Authority of the same.

Period of
notice by
employer

25. Termination under subregulation 23(1) and (2) by employer 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 non-Seychellois worker, not being a casual worker or a worker on probation, the period of notice specified in the contract of employment of the worker or, where a period of notice is not specified, one month's notice.

Termination
by worker

26. (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 of employment of the worker 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 worker suffers ill-treatment at the hands of the employer;
- (b) where the employer is, in respect of the worker, in breach of these Regulations; or
- (c) where the worker is under suspension for investigative purposes,

but the worker shall inform the employer in writing of the termination and of the reason therefor.

27. (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.

Variations of terms of employment

(2) Where the written consent required under subregulation (1) to a variation of the terms and conditions of employment of the worker cannot be obtained, the employer may subject to subregulation (3) and regulation 23 terminate the contract of employment of the worker.

(3) The termination of employment of a worker under subregulation (2) shall be deemed to be for a cause in no way attributable to the worker and the worker is entitled to compensation agreed upon by the employer and the worker.

28. (1) Where a change of ownership of a business occurs and the change would result in the termination of employment of a worker in that business, the employer of the worker may, subject to subregulation (2) and regulation 23 terminate the contract of employment of the worker.

Termination of contract upon changes of ownership

(2) The termination of employment of a worker under subregulation (1) shall be deemed to be for a cause in no way attributable to the worker and the worker is entitled to compensation agreed upon by the employer and the worker.

(3) For the purposes of this regulation a change in the ownership of a business is deemed to occur or to be contemplated whenever by, or by intended, sale, lease or other disposition or by operation of law an owner transfers or proposes to transfer, as the case may be, to another person—

- (a) the business;
- (b) the equipment, fittings or furnishings of the business;
- (c) the goodwill of the business; or
- (d) the business name.

Redundancy
of worker

29. (1) Subject to this regulation, where as a result of an employer—

- (a) ceasing to operate, in whole or part, a business, otherwise than as provided under regulation 28;
- (b) temporarily suspending, in whole or part, the operation of a business for circumstances beyond its control such as a shortage of a raw materials, a natural catastrophe or any disruption of work which have not been foreseen;
- (c) reconstructing the operation of a business for the purpose of facilitating improvement in the business by which greater efficiency and economy can be affected; or
- (d) introducing new technology in a business,

a worker employed in the business has become redundant, that employer may, subject to subregulation 23(1), terminate the contract of employment.

(2) Where the contract of employment of a worker is terminated under subregulation (1), the worker shall be entitled to compensation agreed upon by the employer and the worker.

Grievance
procedure

30. (1) A worker—

- (a) whose contract of employment is terminated—
 - (i) pursuant to regulation 23(1) and(2)(a) or (b);
 - (ii) for a serious disciplinary offence pursuant to regulation 23(4);
- (b) who terminates his contract under regulation 26 (2) (a) or (b),

may initiate the grievance procedure.

(2) Upon conclusion of the grievance procedure initiated under subregulation (1), the Authority may determine as follows—

(a) in the case of subregulation (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 none be taken in lieu of termination;
- (iii) that termination is not justified but, as it would not be practical or convenient to reinstate the worker in the post or offer the worker other suitable employment, allow the termination subject, in the case of subregulation (1)(a)(ii), to the payment in lieu of notice of one month's wages or, where an amount is specified in his contract of employment in the case of a non-Seychellois worker referred to in regulation 25(c), that amount;

(b) in the case of subregulation (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 regulation 26(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 regulation 14(3).

Compensation upon termination

31. Where—

- (a) a contract of employment is frustrated, other than under regulation 24(1)(b);
- (b) a contract of employment is terminated by an employer—
 - (i) under regulation 23(2)(a) or (b) and the grievance procedure is initiated by the worker with the result that termination is allowed under regulation 30(2)(a) (iii);
 - (ii) other than for a serious disciplinary offence under regulation 23(4);
- (c) a contract of employment is terminated by the worker and the Authority determines pursuant to regulation 30(2)(b)(i) that the worker is justified in terminating the contract,

compensation is payable to the worker, in addition to the worker's wages and any benefits earned.

Payment in lieu of Notice

32. 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.

Part VI

Disciplinary Proceedings

Disciplinary offences

33. (1) A disciplinary offence listed in Part I 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 subregulation (2).

34. (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.

Disciplinary
Proceedings

(2) Where the disciplinary offence relates to a serious disciplinary offence, the worker shall be informed in writing with copy to the Authority and 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 subregulation (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 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 disciplinary measure in writing with copy to the Authority and 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 subregulation (3) "representative of the Union" means a person nominated by the Union.

Disciplinary proceedings relating to criminal matters

35. (1) If while a disciplinary offence is being investigated under regulation 34, a criminal proceeding is instituted against the worker in respect of the same offence, the investigation shall be suspended pending the outcome of the criminal proceeding.

(2) Where the criminal proceeding results in a conviction, the disciplinary offence is deemed to have been proved and disciplinary measures may be taken accordingly.

(3) Where the criminal proceeding results in an acquittal, disciplinary proceedings may nevertheless be instituted or continued against the worker provided they relate to some charge other than that on which the worker was acquitted.

(4) Nothing in this regulation is to be read as preventing a disciplinary measure from having effect subject to regulation 34 (5), whatever the outcome of a criminal proceeding, where the disciplinary measure is taken before the institution of the criminal proceeding.

Disciplinary measures

36. 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 regulation 34(5), the Authority may review such disciplinary measure and substitute another or none as the Authority deems fit.

Suspension

37. (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 regulation 35(1), pending the outcome of the trial.

(2) Where a worker who has been suspended under subregulation (1) is reinstated, the worker is entitled to payment for the period of suspension.

(3) A worker who is suspended under subregulation (1) may terminate a contract of employment of the worker without notice.

Part VII**Miscellaneous Provisions**

38. Wherever a dispute, other than one for which the grievance procedure is expressly provided under the other provisions of these Regulations, 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.

Dispute

39. (1) Subject to subregulation (2), wherever an employer or worker is aggrieved by an authority, approval, decision or determination of the Authority, the employer or the employers' organisation on behalf of the employer, the worker or the Union on behalf of the worker, may appeal against it to the Minister.

Appeal and
Review

(2) An appeal under subregulation (1), other than an appeal against a determination of the Authority consequent upon initiation of the grievance procedure, shall be lodged with the Minister 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) Upon an appeal under this regulation, the Minister may consult with the Employment Council before giving the ruling on such appeal.

(4) A reference in these Regulations to the authority, approval, decision or determination of the Authority 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.

(5) A ruling of the Minister under this regulation shall be given within 15 days or such longer period as may be prescribed after the date of lodgment of the appeal.

Retirement
age

40. (1) A person who has attained retirement age shall not, without the written approval of the Authority or after such approval has been withdrawn, remain in the employment of, or take up employment with, another person.

(2) An employer shall not employ a person who has reached retirement age unless that person has the written approval of the Authority and such approval has not been withdrawn.

(3) Approval shall not be given under this regulation 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 regulation may appeal to the Minister under regulation 39.

Non-
Seychellois
workers

41. Non-Seychellois workers, not exempt from the provisions of these Regulations, shall enjoy the same terms and conditions of employment as are applicable to Seychellois workers.

Employer to
keep register
of workers

42. Every employer shall keep either a record-card on each of the workers or a register of the workers, being workers other than casual and part-time, which 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.

43. An employer shall, upon 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.

Certificate of
Employment

44. The Minister may make orders —

Orders

- (a) prescribing anything which is required to be prescribed under these Regulations;
- (b) prescribing forms for the registers to be kept under these Regulations;
- (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 these Regulations;
- (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 these Regulations as regards their application to workers in outer islands and their employer;

45. (1) Subject to such exceptions as the Minister may impose in relation to any Part or to any provision of these Regulations and subject to the control and directions of the Minister, the Authority is responsible for the general administration of these Regulations.

Responsi-
bility for
administra-
tion

(2) The Authority may, subject to the approval of the Minister, delegate any of the functions which the Authority is required to perform under these Regulations to any person.

46. In the exercise of the functions under these Regulations the Authority may —

Exercise of
powers

- (a) at all reasonable time enter any office or work place or site and make any examination or inquiry which the officer considers necessary in order to satisfy the officer that these Regulations are being complied with, and may take extracts or make copies from any books, records or other documents and, if this is not practical, remove the same upon giving a receipt therefor;
- (b) interrogate any employer or worker on any matter concerning the application of these Regulations;
- (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 these Regulations, 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 these Regulations.

Investigation of employment conditions in a zone by persons at direction of the Authority

47. (1) The Authority may appoint one or more persons, who is or are knowledgeable about the labour market and the employment conditions in Seychelles to investigate anything relating to employment in a zone and report thereon in such manner as the Authority directs.

(2) Any person appointed by the Authority shall, and if so directed by the Authority, make reports to the Authority and on the conclusion of the investigation the person shall report the person's opinion in relation to the affairs that the person has been appointed to investigate together with the facts upon which the person's opinion is based to the Authority.

(3) The Authority may give a copy of a report made under this regulation to each person to whom in the opinion of the Authority the report ought to be given by reason that it relates to the affairs of that person to a material extent.

(4) The Authority is not bound to furnish any person with a copy of the report or any part thereof if the Authority is of the opinion that there is good reasons for not divulging the contents of the report or any part thereof.

(5) The Authority shall not give a copy of a report made under this regulation to a person if the Authority believes that legal proceedings that have been or, in his opinion, might be instituted, might be unduly prejudiced by giving the report to that person

(6) A court before which legal proceedings are brought against a person for or in respect of matters dealt with in a report under this regulation may order that a copy of the report or part thereof shall be given to that person.

Part VII

Offences, Penalties and Prosecution

48. (1) A person who —

Offences

- (a) fails to produce or submit any record, document or return or furnish information when required under these Regulations or by the Authority;
- (b) furnishes false or misleading information to the Authority or any person authorised by the Authority under these Regulations;

- (c) intentionally obstructs, or hinders the Authority or any person authorised by the Authority under these Regulations;
- (d) without reasonable excuse, fails to comply with any directions given by the Authority or any conditions attached to any permit issued under these Regulations;
- (e) fails to inform or notify the Authority or any person authorised by the Authority in accordance with the provisions of these Regulations;
- (f) without reasonable excuse, fails to comply with a decision of the Minister made on an appeal under regulation 39;
- (g) contravenes regulation 40(1);
- (h) alters or modifies any record, document or other return issued by any person, or required to be kept, under these Regulations,

is guilty of an offence.

(2) An employer who —

- (a) contravenes regulation 11(2), regulation 15(1), regulation 24(3), regulation 40(2), regulation 43; or
- (b) fails to give a worker copy of the contract of employment under regulation 8(3);
- (c) 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 regulation 13 any wages due to a worker;
- (e) makes any deduction from wages other than that authorised under regulation 14 or regulation 30(2)(b)(ii);
- (f) in the case where a mandatory wage or allowance is prescribed, pays a worker a wage or allowance other than mandatory wage or allowance;

- (g) fails to provide a worker with any of the applicable conditions of employment prescribed under regulation 20(1);
- (h) fails to comply with a determination of the Authority in accordance with regulation 30(2)(a)(ii) or regulation 30(2)(b)(i);
- (i) fails to pay any compensation due under regulation 31;
- (j) knowingly gives or causes to be given a false certificate of employment to a worker;
- (k) fails to make a worker available for interrogation by the Authority under regulation 46 (d),

is guilty of an offence.

(3) Where an employer is convicted of an offence under subregulation (2) (e) and (f) 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.

49. (1) A person who is convicted of an offence under regulation 48, other than an offence specified in subregulation (2) of this regulation, is liable to a fine of R20,000.

Penalties

(2) A person who is convicted of an offence under regulation 48(2)(a) or under regulation 48(1)(f), is liable to a fine of R.40,000.

(3) Where an offence of which a person is convicted under subregulation (1) or subregulation (2) is of a continuing nature and that offence is continued after a conviction therefor, 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 R200, in addition to any penalty imposable for the further offence.

(4) Notwithstanding subregulation (1),(2) or (3) or any other written law, where an offence of which an employer is convicted under these Regulations relates to or affects more than one worker, the fines and mandatory daily penalty imposable under the preceding provisions of this regulation may be imposed in respect of each worker.

(5) Notwithstanding any other written law, a penalty imposed on a person convicted of an offence under these Regulations shall be without prejudice to the liability of the person to pay compensation or any other sum for contravening a provision of these Regulations.

Prosecution

50. (1) Without prejudice to regulation 45(1), no prosecution for an offence under these Regulations is commenced without the consent in writing of the Authority.

(2) A prosecution for an offence under these Regulations may be conducted by the Authority.

(3) Nothing in this regulation 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 these Regulations 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 these Regulations order the person convicted to pay to the other person the moneys due.

**Determination
of the
Authority
conclusive**

51. In any proceedings for an offence under these Regulations which related to an authority, approval, decision or determination of the Authority, 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 be conclusive evidence of the same without proof being given of the signature of the signatory.

52. (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 these Regulations for the employer to do or omit to do, unless it is proved that —

Employer's
liability for
agents

- (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 these Regulations 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.

Schedule 1

Part I

Grievance Procedure (Regulations 30, 34(5), 38)

1. In this Part "worker" includes an unemployed person.

Definition

2. (1) Wherever an employer or worker is empowered by or under these Regulations to initiate the grievance procedure, the employer or worker may, within 14 days of becoming aware of the

Registration
of Grievance

event, act or matter giving rise to the grievance, register a grievance with the Authority furnishing the Authority with all the information the Authority may require.

(2) Where there exist internal procedures for resolving disputes between employer and worker or where the information required under subparagraph (1) is not furnished to the Authority, the Authority may suspend registration of the grievance until satisfied that the internal procedures have been exhausted or have proven inconclusive or until the Authority 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 Authority, if satisfied that registration within the time was impracticable or if the Authority has itself suspended registration under subparagraph (2), shall allow registration out of time.

Grievance
other than
relating to
determination

3. (1) Where the grievance relates to any matter, other than the termination of a worker's contract of employment, the Authority shall immediately upon the grievance being registered refer the matter to the Union, if any, and the Union may consult with the employer and worker concerned with the object of resolving the matter by agreement after the Authority's approval.

(2) Where, within 14 days after a referral to the Union under subparagraph (1), no agreement has been reached or the Union has failed to enter into consultation as required under subparagraph (1), or where the worker is not a member of a Union the Authority shall, upon inquiry into the grievance, determine the matter.

Grievance
relating to
termination
etc.

4. The Authority seized of a grievance relating to the termination of worker's contract of employment or to refusal of access to employment shall, within 7 days after registration of the grievance, invite the worker, the Union, if any, the employer and employers' organisation, if any, for consultation.

5. (1) The Authority shall keep a record of the consultations held pursuant to paragraph 4 and shall file any evidence or documents produced and any written submission made.

Record of consultations and determination

(2) Following the conclusion of consultations the Authority considers the case and makes the determination.

(3) A determination by the Authority under this paragraph shall be made within 42 days after the date of registration of the grievance.

6. The employer or worker may, not later than 7 days after being notified of a determination by the Authority under paragraph 3(2) or paragraph 5(3) register an appeal to the Minister against that determination.

Appeal

7. Where the same grievance is registered by a number of workers against the same employer a joint procedure may be followed.

Joint procedure

8. This procedure is also subject to Part II of this Schedule.

Part II

Part II

General Provisions Applicable to Part I

9. The absence of any person invited to consultation under Part I of this Schedule from those consultations does not vitiate the proceedings nor shall a determination made under Part I be vitiated solely on the ground that it has not been made within the period specified in this Part.

Absence or delay not a defect

10. Wherever possible the consultations should be joint but the Authority may hold separate consultations.

Consultation may be separate

11. (1) A party to any consultation under Part I of this Schedule may attend in person and be accompanied by a representative.

Representation

(2) Notwithstanding subparagraph (1) where the number of workers concerned by either procedure exceeds 3, there may not be more than 3 representative on their behalf.

Exercise of
right

12. Any right of an employer or worker under Part I of this Schedule may, at the request of the employer or worker, be exercised on behalf of the employer or worker by the employer's organisation or the Union respectively.

Employer's
organisation

13. An employer's organisation shall only be invited to consultations under Part I of this Schedule where —

- (a) the employer concerned so requests; or
- (b) the Authority considers its presence necessary.

SCHEDULE 2 (Reg. 33 and Reg. 36)

Part I

Disciplinary offences

1. 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) fails to obey reasonable orders or instructions given by the employer or representative of the employer;
- (c) makes any illicit or unauthorised use of the property of the undertaking;
- (d) negligently causes minor damage to the property of the undertaking;
- (e) fails to comply with the rules and regulations of the undertaking;
- (f) commits an offence under this Act other than an offence referred in Part II (j) of this Schedule.

Part II**Serious Disciplinary Offences**

2. 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 authorisation or any reasonable excuse on 2 or more occasions within a period of 12 months;
- (b) fails repeatedly to obey reasonable orders or instructions given by the employer or representative of the employer;
- (c) 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;
- (d) wilfully or intentionally damages the property of the undertaking thereby causing a reduction or stoppage of production or serious prejudice to the undertaking;
- (e) is unable to carry out the duties of the worker due to the effect of alcohol or dangerous drugs;
- (f) 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;
- (g) in the course of the employment of the worker assaults, or inflicts bodily injury upon a client of the employer or another worker;
- (h) commits any active or passive bribery or corruption;
- (i) commits an offence under these Regulations whereby the worker causes serious prejudice to the employer or employer's undertaking;

- (j) 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;
- (k) shows a lack of respect to, insults or threatens a client of the employer or another worker whether it be a superior, subordinate or a colleague.
- (l) wilfully, repeatedly and without justification fails to achieve a normal output as fixed in accordance with standards applicable to his work.
- (m) is absent without permission from the under-taking or from the post of the worker during working hours.
- (n) 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;
- (o) 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;
- (p) knowingly makes false statements during investigation of accidents at work or of breaches of discipline.

Part III

Disciplinary Measures (Reg.36)

3. 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) redeployment;

- (d) demotion;
- (e) suspension from work without pay for a period of up to 14 days;
- (f) termination of employment with notice or payment in lieu of notice;
- (g) termination of employment without notice i.e. instant dismissal without payment of compensation;

MADE this 31st day of January, 1997.

J. MICHEL
MINISTER OF FINANCE
AND COMMUNICATIONS
