Seychelles Employment Law Review
Submission by the Seychelles Chamber of Commerce and Industry (SCCI)

" SCCI wants to create an enabling environment conducive to the growth of all businesses, equal opportunities to gather cutting edge skills for all our workforce who can aspire to be part of building a competitive Seychelles."

Background:

Labour and employment laws and related policies have been identified as one of the critical barriers to ease of doing business in Seychelles[1]. The highly regulated, inflexible, and lack of adaptive mechanism of the existing laws and regulations surfaced during the COVID-19 pandemic when companies and employers were struggling to survive but unable to innovate and exercise discretion in a timely and effective manner to face the unexpected economic shock.

Given the rapid changes in the country's economic landscape, especially with the impact of the COVID-19 pandemic, the way people work has changed. While effort has been focused on the economy and job recovery, changes have occurred in the workplaces due to lockdowns, safety concerns, and diversification. For example, working from home or remote work has become a new normal. Other aspects of work arrangements, such as employment and contractual relationships, time and performance management, remuneration and benefits, safety and health, are also affected.

It is important that we have an updated, flexible and balance employment legislation that addresses and meets all parties' needs, taking into account the realities of the world of work today and preparing us for the changing future of work. Reform in our labour law is necessary to create an enabling environment to facilitate productivity and enterprise growth whilst ensuring fair working conditions, good labour relations and effective social dialogue. The enhanced job security, economic efficiency and well-being will enable us to move forward in this global arena and foster a competitive working environment.

The Seychelles Chamber of Commerce and Industry (SCCI) applauds the Government initiative on employment law reform. To support the Government effort, we have established a working committee consisting of legal and employment experts, business owners and HR practitioners and conducted a member survey on employment law review. Given the time limitation, we have managed to survey forty-five enterprises between 16-30 March 2021.

The following proposal has been drafted based on desk research by the working committee, outcomes of the member survey, inputs from members' association and member enterprise and outcomes of the discussion among members of the working committee, particularly on:

- Employment Act 1995,
- Employment (conditions of Employment) Regulations 1991,
- Employment Bill 2016,

[1] UNCTAD Investment Policy Review 2020)

- White Papers of the Ministry of Labour and Human Resources Development and the Ministry of Employment, Entrepreneurship Development and Business Innovation on the Employment Bill.
- International Labour Organisation (ILO) Conventions
- Employment laws in others jurisdiction, and
- the changing needs in the world of work

Based on the above, we are putting forward the following proposals, outlining the private sector's position on the various issues identified. The proposals are drafted and arranged in accordance with the structure of the Employment Act 1995 and Employment (Conditions of Employment) Regulations 1991, and referring to the relevant sections in the Act and regulations, including the sections in the Employment Bill 2016. Please be noted that this submission focuses on critical issues at this stage, we would be providing more inputs in the later consultation stage, including review of the new law.

PART II- EMPLOYMENT SERVICES BUREAU AND EMPLOYMENT AGENCIES

1. A new Employment legislation

SCCI proposes that a new piece of employment legislation should be enacted to replace the current Employment Act; which is more than 25 years in existence and have been amended over the years to address the parties' changing needs. Despite the amendments, the laws are still outdated and do not serve the needs of the parties. From our member survey, almost 70 per cent of enterprises agreed that an entirely new Act should be enacted to replace the 1995 Employment Act and 1991 Employment Regulation.

2. The requirement to notify (Section 5A)

According to our survey, the majority of enterprises indicated that the requirement to notify the Department of Employment whenever a vacancy occurs and filled had created an unnecessary burden to employers. Many of them feel that it is an unwarranted interference to business operation. SCCI understands the Department's need to collect employment data and be willing to collaborate, but the framework should make it easy and convenient for business to do so.

SCCI proposes that the requirement to notify as provided in Section 5A of the Act be abolished. For data collection such as number of jobs available and filled, it is recommended that a digital seamless system for collection of data be introduced, with a standard template provided to facilitate the collection process.

3. Job Card (Section 5(3), 17 and 17A)

More than 89 per cent of enterprises surveyed were having issues with the provision that prohibits employers from employing Seychellois workers who do not have job cards issued by the Employment Services Bureau. 56 per cent of the enterprises surveyed indicated that the job card requirement is burdensome for both employers and workers, while 29 per cent stated that it is a duplication of the requirement to notify under Section 5A of the Act.

SCCI proposes that the Job Card requirement for any Seychellois seeking employment or alternative employment and the prohibition for employers to employ a Seychellois who has not obtained a job card be abolished. The need for any Seychellois seeking employment or alternative employment to get a job card does not add value but create an unnecessary

burden for workers who are actively seeking work. Similarly, the prohibition for employers to employ a Seychellois who has not obtained a job card is not sensible and can become a barrier for genuine job seekers and employers.

Should the intent of the Ministry of Employment be to gather information of the number of job seekers and number of jobseekers that have secured employment, it is recommended that a digital seamless system for collection of data be introduced. In this regard, **SCCI also proposes that the job seekers data be made accessible by registered employers.**

4. Employment Agency *(Section 5)*

Currently, the Employment Services Bureau of the Department of Employment serves as an employment agency, just like the private employment agency, to help match the employer and worker for a suitable job. Our survey reveals that 51 per cent of enterprises used the service of the Employment Services Bureau. However, only half of them reported feeling satisfied with it. 56 per cent of all surveyed enterprises said that they would not use the Employment Services Bureau to recruit workers in the near future. Of these enterprises, 60 per cent thought that the Employment Services Bureau should not serve as an employment agency, 48 per cent stressed that the services provided were of poor quality, and 40 per cent indicated they were slow and time-consuming. **SCCI proposes that the Employment Services Bureau of the Department of Employment should not serve as the employment agency and compete with the private employment agency, which is regulated under the Act, instead it should provide the relevant information with easy accessibility to both employers and workers in need**

5. **Employers to advertise vacancies in certain circumstances** *(Section 11)*

To ensure Seychellois job seekers are given priority, employers of certain industries planning to recruit a Non-Seychellois worker must show that they have sufficiently informed Seychellois of the job opportunities. With regards to the proposal that an employer who does not use the services of an employment agency to advertise should advertise the vacancy in two stages:

(i) The first stage is optional that employers may advertise the vacancy in any manner locally. If employers do not find any interested or suitable candidate and anticipate employing a Non-Seychellois.

(ii) The second stage becomes mandatory; employers must advertise the vacancy for a minimum of 3 days in a widely distributed newspaper in the country.

While we fully appreciate the Government strategy to give employment priority to Seychellois job seekers; we disagree with the two stages proposal that employer who does not use the services of an employment agency must advertise the vacancy for a minimum of 3 days in a widely distributed newspaper if they do not find any interested or suitable candidate after first stage advertising in their own choice, and anticipates employing a Non-Seychellois. SCCI is of the view that there should not be two stages of advertising, as it is creating an unnecessary burden to employers in terms of cost and time. In today digital world, employers should have the option to use either newspaper or online advertising platform for advertisement. **SCCI proposes for employers that use newspapers, to advertise for a minimum of 3 days and, for employers that use an online advertising platform, can be extended to 5 or 7 days.**

6. **Employment of Non-Seychelles and localisation Plan** *(Section 18)*

Starting in 2014, the Government implemented a quota-based work permits system to protect the local labour force and facilitate foreign workers' recruitment for positions where local workers are not available. For the employment of Non-Seychelles workers, employers must:

- apply for the Certificate of Entitlement (COE) from the Employment Department. The application must be within the assigned quota and accompanied by a localisation plan.
- Upon receiving the COE, employers must apply to the Immigration Department for Gainful Occupational Permit (GOP), a temporary work permit for the Non-Seychelles worker to enter the country to fill the specific post.

While employers fully agree with the Government effort to protect the local labour force, the process of application is not only cumbersome but lengthy. Employers have to attend to the Ministry's different departments, and there is lack of coordination between the Departments involved in the documentation and approval process.

The increasing demand for migrant workers in recent years was due to the shortages of local workers and skills to meet the growing demand in the economy. In line with the Government policy and quota system, businesses only recruit Non-Seychelles workers when there is a real lack of local skill. Companies are working towards imparting the required skills and know-how to the Seychelles workers. Any rational employer or business will not incur additional expenses and effort to bring in ex-pats workers if they can source the country's same skills.

With regards to the localisation plan, while employers fully support the effort to develop and enhance the skills of the Seychellois workers, and skill transfer from foreign ex-pats to our local workforce, the existing localisation plan is not effective. We are still of the view that the need for employers to submit the plan including the CV of the local and to be monitored and assessed by the Department of Employment is inefficient and costly. All employers and business should have the discretion on how to run or operate the business including selection of suitable employees, who to be trained and who to be promoted, as only employers who engaged and worked with the employee know if he/she is suitable for a particular position. Please do refer to Paragraph 10 of the document where we articulate the Skills Development Contract.

As such, SCCI proposes that:

- **the recruitment and employment process of Non-Seychellois to be simplified, utilising the advance in digital technology to facilitate online application.**
- **A One-stop centre that deals with the entire process of applying for employment of Non-Seychellois workers.**
- **A clear guideline on the procedures and documents requirements to be issued to employers.**
- **The quota, COE system and the localisation plan should be reviewed to enhance its effectiveness.**

Part III – CONTRACT OF EMPLOYMENT

7. Fixed Term Contract *(Section 19)*

The Ministry has proposed:

- to classify the type of worker's employment contract based on the duration and number of hours worked in a week for the same employer – permanent contract (full-time and part-time), fixed term contract and casual work.
- to specify in what circumstances fixed-term contract can be permitted, for example, temporary replacement of a worker or temporary or seasonal work, Non-Seychelles workers, training and development or high skill professional work etc.

SCCI agrees with the proposal to classify the type of employment contract but does not agree with the specification in what circumstances a fixed-term contract can be permitted. This is supported by 71 per cent of enterprises surveyed that agreed with the proposal to classify fixed-term contract based on their duration and number of hours worked in a week for the same employer. **SCCI believes that employers shall have the discretion to decide the type of contract to offer based on their business requirement and to be negotiated and agreed upon between employers and workers, as supported by all the enterprise surveyed.**

8. Minimum Age for Employment and Protection of Children *(Section 20 and Regulation 22 of the Condition of Employment Regulations 1991)*

Currently, the minimum age for employment is 15 years. However, Regulation 22 of the *Conditions of Employment Regulations 1991 (SI 34 of 1991*) prohibits the employment of persons below the age of 18:

- in a hotel, guest-house, boarding house, any place where tourists are accommodated, restaurant, shop, bar, nightclub, dance hall, discotheque or similar places of entertainment or on a ship or aircraft.
- between the hours of 10 p.m. and 5 a.m.

except special written approval is granted by the Employment Department for the employment of persons aged 15 – 17 years.

In accordance with the C*onstitution* and in line with the ILO *Minimum Age Convention 138* and *Worst Form of Child labour Convention No. 182*, **SCCI agrees that the minimum age for employment should be maintained at 15; however, the prohibition for employing persons between 15 – 17 years of age should not include restaurant and shop that do not involve the sale or service of alcohol/tobacco**, as indicated by 77 per cent of the enterprises surveyed. This would enable the students to engage in part-time or casual work, obtain work experience, or reduce parents' burden.

SCCI agrees that the existing measures should be in place to protect our children and young people. In this regard, SCCI concurs with the proposal to strengthen the protection for children and young people under 18 years of age, to include and take into consideration the nature of work or the circumstances in which it is carried out that likely to harm the health, safety or moral of the children, as supported by 84 per cent of surveyed enterprises.

SCCI believes that we should encourage young people to do holiday work with safeguards and controlled hours not to affect their school work. In this regards, **SCCI also proposes provisions that permit holiday work for students above 15 years during holidays for a specified number of hours of work at a specified rate of pay and work that does not involve the sale or service of alcohol/tobacco.**

9. **Casual Worker** *(Section 25)*

Due to the uncertainty of the circumstances and the changing needs of today world of work, flexibility in a working arrangement is becoming more relevant and demanded. Our survey reveals that more than half of the surveyed enterprises have casual workers in their workforce. The main reason for engaging casual workers are mainly to temporary fill up a vacancy or replace staff on leave (67 per cent), keep up with uncertain business demand (59 per cent), due to seasonal requirement (49 per cent), and easily hiring and letting go, workers, as needed (44 per cent).

However, most enterprises (88 per cent) reported having issues with the current provision in Section 25 of the 1995 Employment Act, which states that:

- the employer shall not employ a casual worker for more than 3 months, or any longer period as authorised by the Employment Department.
- Employers shall not employ a casual worker in a permanent or continuous nature except for the purpose of allowing the substantive holder of the job to go on leave or fill in a vacancy pending recruitment of a substantive holder for the job.

In line with market demand and the fact that some workers prefer to have the flexibility to move around with flexible hours of work or hold multiple jobs at different companies, casual and part-time work should be encouraged in this context. It also enables young mothers and students who wish to work during the holidays.

Employers fully appreciates that casual workers do not get the same benefits as other workers in permanent, full-time, part-time or fixed-term contracts; however, casual workers are currently getting higher minimum wages than other workers. Furthermore, Regulation 9 of the Conditions of Employment Regulations provides that those casual workers who have worked for the same employer be entitled to half of their daily pay in lieu of leave for every five consecutive days worked.

Our survey revealed that more than half of the enterprises surveyed are willing to pay up to 10 per cent higher than the current minimum wages for casual workers, and over a quarter of enterprise surveyed are willing to pay up to 15 per cent higher if there is less restriction to hire casual workers.

Based on the above and in view of the nature of casual work, **SCCI proposes that casual workers shall not be entitled to any employment benefit (annual leave, sick leave, holiday etc.) as those applicable to other workers, but they should be entitled for a "casual loading" i.e. an additional payment on top of the normal hourly pay.** In order words, casual workers will not be entitled to any employment benefit but they will receive higher wages (minimum wages) than other workers.

SCCI also proposes that the contract of casual workers shall not be restricted in terms of duration. To ease the need to register with the Department of Employment**, SCCI proposes online registration** instead of attending the Employment Department**.**

Despite the above, we may consider establishing a system whereby employers can deduct a specified percentage of the casual workers' wages and pay to a welfare fund that provides a specific "insurance" for the workers if they fall sick. Alternatively, the casual workers could be encouraged to make voluntary contributions to the fund to cater for sick leave or holiday pay.

Part IV - TRAINEES

10. **Conditions of Employment** *(Section 31)*

The majority of enterprises (85 per cent) reported having issues with the current provision of section 31 of the *Employment Act 1955* that stipulates that trainees are entitled to the same employment conditions as other workers and any additional benefits approved by the Employment Department. 64 per cent of them indicated that trainees should not be entitled to the same conditions or benefits of employment as other workers; they should have another type of contract with different terms and benefits.

SCCI apprehends that it is important for employers to provide on-the-job training and contribute to our students and workers' skills development. However, with the understanding that trainees are not workers, SCCI disagrees that trainees are subjected to the same employment conditions as other workers and any other additional benefits approved by the Employment Department as stipulated in Section 31 of the Employment Act 1995.

In consideration of the Ministry's proposal to have two types of contracts, i.e. Contract for Training and Contract for Skill Development:

- **SCCI agrees that there should be a different contract for trainees between employer and workers for up to 12 months, and there should not be any age limit for trainees.**
- **Regarding Contract for Skill Development between the Government, Employer and Worker, SCCI proposes that it should be implemented under the Government skill development scheme and to be jointly funded by the Government and Employers**.
- **SCCI, however, disagrees with the proposal that persons on a contract for training or contract for skill development shall have the same conditions of employment as other workers.**

PART V - A. PROTECTION OF WAGES

11. **Authorised Deductions** *(Section 33) and* **payment in lieu of notice** *(Section 63)*

(i) In accordance with Section 63 of the Employment Act, 1995 provides that payment corresponding to the period of notice required or to such part of it as is not worked may be made in lieu. Therefore, employers are required to pay such payment in lieu of notice if they want the workers to leave early, similarly workers are obliged to pay such payment in lieu if they decide to leave early when they are required to serve the full notice.

(ii) However, employers currently face the issue of workers leaving the employment without providing any notice of resignation. This has caused disruption in business operation and inconvenience to employers to find a replacement. As a prevention measure and to compensate employers for the disruption and inconvenience, **we propose that employers are authorised to deduct the final wages of the worker concerned for payment in lieu of notice, without having to go through the grievance process**. This is a common provision in most Employment legislation in other jurisdictions.

(iii) On the other hand, if both employer and worker have mutually agreed to waive the notice period when ending employment, there should be permitted to do so. **SCCI thus proposes the new legislation have provisions that enable both employer and worker to waive the notice period when they have mutually agreed.**

Part V –B. REGULATION OF WAGES AND CONDITIONS OF EMPLOYMENT

12. **Thirteenth month-pay** *(Section 46C)*

Nearly all enterprises (97 per cent) reported having issues with Section 46C of the 1995 Employment Act that requires employers to provide all workers with a thirteenth-month pay. Enterprises reported the following reasons for not agreeing with the 13th-month pay:

(i) The 13th month-pay should be abolished permanently, and employers should be encouraged to pay a discretionary bonus based on workers' and business performance (62 per cent);
(ii) The 13th month-pay does not reward hard work or promote productivity (62 per cent);
(iii) The 13th month-pay could result in financial hardship when businesses are not making a profit or operating at a loss (59 per cent);
(iv) The 13th month-pay undermines employers' ability to reward workers with discretionary bonuses (59 per cent);
(v) The 13th month-pay has already resulted in financial hardship in their businesses (44 per cent).

In line with the survey results, **SCCI strongly proposed that the 13 months-pay provisions be abolished,** as indicated by most surveyed enterprises. The 13 month-pay could cause financial hardship to the employer when the business is not making a profit or operating at a loss. It also does not reward hard work nor promote productivity and undermine employers' ability to reward workers with discretionary bonus. Instead**, employers should be encouraged to pay a discretionary bonus to workers based on worker's and company's performance.**

13. Employment (Conditions of Employment) Regulations, 1991

13.1 Annual leave (Regulation 9)

- **SCCI disagrees with the proposal to increase the annual leave provision in Regulations 9 from 21 days to 24 days.** This is supported by over 70 per cent of surveyed enterprises. It is also worth highlighting that such a proposal does not include casual or part-time workers. **SCCI proposes that the annual leave provision should maintain at 21 days per year**.
- Regulation 9(3) stipulates that leave not taken in a year may be accumulated. **SCCI proposes that such accumulation should be limited to a year only and any leave not taken for more than a year shall be forfeited. In considering the rationale of annual leave and maintaining the well-being of staff, we are of the view that business should encourage their workers to take the leave in the year that it is accrued.**
- In addition, **there should be a clear indication of how annual leave is to be taken and encouraged to be taken in the year that it is being accrued**. Many employers, especially those in the tourism, hotels and restaurants that operate 7 days a week are having difficulty when weekends are excluded towards annual leave calculations. *Regulation 9(9) of the Employment (Conditions of Employment) Regulations, 1991* that took effect from 1 January 2006 stipulated *that "Saturdays, Sundays and Public Holidays shall be excluded in calculating a period of annual leave earned*". **There is no provision stated that Saturday and Sunday shall be excluded in calculating a period of annual leave taken**. However, in practice, and as interpreted by the Department of Employment, including the FAQ, states that "workers are entitled to 21 days annual leave excluding

Saturdays, Sundays and Public Holidays." For workers in hotels or restaurants, their rest day could be any day of the week and weekend could be their work-day. Therefore, it is unreasonable to exclude Saturday and Sunday in calculating annual leave taken. SCCI proposes for clear provision that instead of indicating that Saturday and Sunday shall not be excluded from calculating annual leave earned or taken, it should be **workers' rest day and holiday shall be excluded from calculating annual leave earned or taken.**

However, the SCCI proposes that there must be a review of the definition of Rest Day and Holiday going forward. Currently, the Regulation defined Rest Period to be 24 consecutive hours of rest for every 7 days, but defined Holiday as Sunday and Public Holiday. The SCCI proposes for a review of both definitions along the following:

- REST DAY: Every employee shall be allowed in each week a rest day of 1 whole day. Employee who required to work during his rest day will be paid a higher rate as set out in the Act.
- PUBLIC HOLIDAY: Every employee shall be entitled to a paid holiday as gazetted public holidays in any one calendar year, and employee who required to work during the holiday or substitute holiday will be paid a holiday rate as set out in the Act.

13.2 Sick leave (Regulation 12)

SCCI agrees with the proposal under Regulation 12 to reduce the paid sick leave entitlement from 30 days to 15 days, and if confined after the initial 15 days, another 15 days would be extended, as supported by 82 per cent of enterprises surveyed. The SCCI is also of the view that the sick claim mechanism to be reviewed and discussed with the Agency of Social Protection.

13.3 Holiday: (Regulation 5)

Regulation 5(4): Nothing in the preceding provisions of this regulation shall be construed as preventing an employer who requires any worker to work on a holiday from agreeing to allow double pay for that day or an alternative holiday at the worker's option.

SCCI proposes that the alternative holiday shall be at the employer's option, in line with Regulation 5(2) and 5(3).

PART VI – PROTECTION OF EMPLOYMENT

14. Lay-off and redundancy (Section 49 and 63)

Under the Employment Act 1995, employers are required to obtain approval (initiate negotiation procedure) before they are allowed to temporary lay-off workers (section 49) or terminate workers' employment due to redundancy (section 63). SCCI conducted a separate survey on the impact of COVID-19 on businesses and employment in early March 2021. Based on the responses of the survey, SCCI is putting forward the proposal **to review the processes and procedures for laying off or terminating workers, particularly the negotiation procedures that required employers to obtain approval from the Employment Department before implementing lay-off or redundancy**. The proposal of SCCI is supported by the following:

- Almost 90 per cent of enterprises indicated that the processes and procedures for laying off or terminating workers for redundancy should be reviewed.
- The requirement for approval is against the doctrine of management prerogative, in which an employer shall have the right to make decisions on how to manage the business and its workforce, including the decision to hire, transfer, restructure, lay-off or terminate the workers, as long as they are exercised in good faith for the advancement of the business' interest.
- Only the employers know the businesses' requirements, where, when, how, and what decision to be made in different circumstances to survive and compete in today's competitive world. The recruitment exercise is time-consuming and costly, and employers may not be able to get suitable workers with the right skills and knowledge. Thus, if not because of circumstances demands, employers will not take the hard decision to terminate the workers.
- Under Section 63(3), workers can initiate grievance procedures under Schedule 1 Part II of the Employment Act when they are made redundant. Therefore, since there are grievance procedures and Employment Tribunal available for workers to complain, it is not necessary that employers must obtain approval (negotiation procedure) for temporary lay-off or termination of workers due to redundancy.
- Employers will only implement lay-off or redundancy if they have to do so. Businesses that are not facing financial difficulties or experience growth will not need to make their workers redundant. Instead, they will hire more people to support the business.

SCCI proposes that for any lay-off or redundancy that fulfilled the criteria specified in Section 51 of the Employment Act 1995the employer shall inform the Department of Employment of its intention to lay off workers or make workers redundant and the reason/s in support of such action without having to seek approval from the Department of Employment for such lay-off or redundancy plan. It is the responsibility of the employer to ensure that they have followed the due process, and pay all the statutory or contractual dues to the worker's concern.

15. Flexibility and adaptability

With the advances in technology and communication and the pandemic's impact, there has been a growing demand for a more liberal work environment and arrangement that enable employers to adapt, diversify and innovate in response to the changing economic circumstances and evolving changes in the workplace. Working arrangement such as teleworking, multi-hire contract etc., is a growing trend in the future world of work. Therefore, the laws should be able to cater to the changing needs in the workplace, enable both employers and workers to leverage their respective needs with the goal of long-term, fair and sustainable flexibility towards industrial peace and harmony.

SCCI is of the view that our current laws and regulations are insufficient to cater to our workplace's changing needs, as supported by 87 per cent of surveyed enterprises. Based on the survey responses, SCCI proposes the new legislation to have provisions:

(i) **That facilitate flexible employment to enable employers engage workers on a permanent full time, part-time, fixed-term or casual basis according to business requirements**, as supported by 79 per cent of surveyed enterprises. This is in line with the increasing demand for numerical flexibility in employment of ensuring that the

appropriate amount of labour is employed for the needs of the organisation. This involves putting people on a variety of contracts to ensure that fluctuations in the demand for employees across the working day, week, or year are matched with the appropriate supply of labour. This can be achieved through flexible employment methods such as short-term contracts, outsourcing, temporary or part time and other means. With the increasing uncertainty in business operation thus the needs for different types of workers in different situations, the employers' discretion to engage different types of workers has become a necessity, with reasonable safeguard for workers' protection.

(ii) **That permits employers to downsize the workforce and temporary lay off or make workers redundant, as 79 per cent of surveyed enterprises indicated**. Refer to paragraph 14 above on lay-off and redundancy.

(iii) **That facilitate employers and workers to mutually agree to vary the terms of employment, including wages and benefits, or to transfer or redeploy workers to critical business areas**, as indicated by 76 per cent of surveyed enterprises. This flexibility that promotes innovation, mutual understanding and shared commitment is crucial in crisis times. It enables employers to restructure the workforce or business operation to adapt to the changing needs and avoid business closure, lay-off or redundancy. SCCI has been advising members to implement other measures and only resort to lay-off or redundancy when other avenues have been exhausted. This was witnessed during the pandemic when some businesses have been adversely affected; employers were having difficulty restructuring or innovating as they have been unable to vary the terms of employment despite workers' consent due to the rigidity in the current Employment Act.

(iv) **For unpaid leave or furlough** as indicated by 74 per cent of surveyed enterprises. To assist and facilitate employers' efforts to retain workers and to ensure business continuity, a certain degree of flexibility would be helpful so that employers can make workforce adjustments, at least temporarily, during the crisis, especially when financial assistance is exhausted. This would enable employers to apply furlough or require workers to take unpaid leave when there is a significant drop in business activity due to the pandemic's impact and the need to reduce the workforce. This temporary measure can be implemented on a rotation basis among the workers to avoid lay-off or redundancy. A good social protection scheme for workers would enhance the effectiveness of these measures.

(v) **That facilitates employers' discretion to employ non-Seychellois workers when they cannot** find suitable Seychellois workers according to the needs for specific skills and expertise, as reported by 74 per cent of surveyed enterprises. SCCI fully supports the Government strategy that Seychellois's employment should be the priority; however, when employers are unable to find suitable Seychellois workers or a shortage of workers, there should be provisions to facilitate the employment of Non-Seychellois, as indicated in paragraphs 5 and 6 above.

(vi) **That facilitate employers' discretion to employ or re-employ retired workers based on business requirements**, as indicated by 71 per cent of surveyed enterprises. Currently, employers are required to obtain approval from the Department of Employment if they intend to engage retired workers, and recently the Department has announced its intention to limit the approval. SCCI fully appreciates the

Government strategy to encourage youth employment, but it should not prohibit or restrict the private sector from engaging retired workers. We must acknowledge that certain occupation, especially high skilled profession, skill and experience, are the advantage and requirements, and it will not be easy to get a replacement. However, for another job that needs strength, energy, precision or a younger mind, young people are more suitable. In that case, employers would prefer to employ the youth. Therefore, it should be up to the employers and workers to decide who to hire or continue to work after retirement. Employers know the business requirements, and workers know if they should continue to work after retirement. Also, there are more benefits for retired people to continue working, including keeping their mind active, curing boredom, preventing dementia, and providing the opportunity to pass on their skills to the younger generation.

(vii) **That allows for voluntary separation and early retirement**, as indicated by 59 per cent of surveyed enterprises. When there is reduced demand or a company implements restructuring, it is quite common for a company to reduce the workforce. Instead of implementing lay-off or redundancy, which is unilaterally implemented by employers, there should be some flexibility that enables employers to implement a voluntary separation scheme or early retirement by inviting workers to apply to be voluntary terminated. Usually, some cash benefits are tied to the scheme, which exceeds the statutory or contractual termination benefits. Upon application by workers, the company has the discretion to decide who should be released through the voluntary or early retirement scheme.

(viii) **That facilitate teleworking or working from home**, as requested by 59 per cent of surveyed enterprises. Since the pandemic outbreak with lockdown and movement restriction, teleworking or working from home has become a new working arrangement. However, there is no laws or regulations that govern this evolving working arrangement. Provisions that provide, for example, the definition of teleworking, the obligations of employers and workers, working hours, reporting and productivity, confidentiality, data security, communication, occupational health and safety, workers' compensation, work equipment etc., would be needed.

PART VII – DISCIPLINARY ACTION

16. Disciplinary Measures

Section 55 of the Employment Act stipulates that upon proof of disciplinary offence, the employer may take any one or more of the disciplinary measures listed in Part III of Schedule 2.

SCCI proposes that "…may take any one or more of the disciplinary measures" to be replaced with "may take any one of the disciplinary measures listed in Part III of Schedule 2 which is commensurate with the offences committed."

PART VIII- TERMINATION OF CONTRACT

17. Termination of Employment Contract

With regards to the proposals to provide clarity on how a contract of employment can be terminated, the enterprises surveyed indicated as below:

- Employers should inform workers at least one month before the end of their fixed-term contract whether their contracts will be renewed or naturally come to an end (81 per cent);
- There should be a list of all the possible ways in which workers or employers can terminate contracts. This list should also consider ways in which contracts can naturally end, such as the end of a fixed-term contract and retirement, among others (72 per cent);
- Workers' deaths should be considered a way that contracts can naturally end (56 per cent).

SCCI agrees with the Ministry's proposal to provide clarity on how a contract of employment can be terminated as indicated above including providing a list of possible ways in which a contract can be terminated but also to have provision to give room for other possible types of termination.

18. Compensation (Severance Pay) Upon Termination, Resignation or Retirement

Currently, employers are obliged to pay compensation to workers (i) at the rate of one day's wage for every month of service; (ii) double the rate in (i) for workers in a fixed-term contract (Section 47(2) of the EA:

- whose contracts were terminated not due to their fault, including the frustration of contract (Section 62 of EA)
- who have resigned or retired and have served at least five years of continuous service with the employers (Section 62A(1) of EA).

Section 70 of the Employment Bill provides for Severance Pay for workers who resign under Section 58 and 59 and have worked for 5 years or more, including voluntarily resignation or self-termination (Section 58). SCCI disagrees with the proposal and **proposes that workers self-terminate under Section 58 should not be eligible for Severance Pay**.

19. Employment Tribunal (Section 80 – 85 of Employment Bill (EB) 2016)

The Ministry has proposed for the Employment Tribunal to be transferred from the MLHRD to the Judiciary.

- The Employment Tribunal is to be chaired by a Magistrate and two Vice-Chairperson who are legal practitioners, appointed by the President.
- The President will also appoint 12 members from a panel after consultation with employers' organisation and trade unions.
- Each sitting of the tribunal shall have members representing employers' organisation and trade union.
- Party to the tribunal can be represented by a lawyer or representative from employers' organisation or trade union.

SCCI agrees with the proposal to transfer the Employment Tribunal to the Judiciary with the above composition. SCCI emphasises that the 12 members of the Employment Tribunal to be appointed should be of equal number from employers' organisation (6) and trade union (6). SCCI also proposes to have mechanism that enhances the efficiency of the tribunal, particularly the costs and time incurred for parties involved in the grievances.

In addition to the Employment Tribunal established under Section 80 of the Employment Bill (EB) 2016 that function as a tribunal for disputes related to labour and employment issues:

- Section 78 of EB established Tripartite Consultative Committee – consists of tripartite members appointed by the Minister to advise the Minister on matter relating to industrial relations or any other matter referred by the Minister.
- Section 79 of EB established Employment Advisory Committee – consists of 15 members appointed by the Minister from among the responsible members of the community to advise the Minister on any matter referred to it by the Minister.

With the establishment of the Employment Tribunal (section 80), and the Tripartite Consultative Committee (section 78), SCCI is of the view that the Employment Advisory Committee (section 79) is not necessary.

SCCI proposes that a National Task Force on Jobs and Enterprise Growth be established under the new legislation to accelerate economic growth and job creation. The task force would assist with a holistic reform that involves Industrial Relations, Minimum Wages, social security etc. The proposed task force shall be headed by the Minister of Employment and Social Welfares, and consists of officials from the Ministry of Employment and Social Welfares, Ministry of Investment, Entrepreneurship and Industry and other related agencies, SCCI, leading business leaders, workers' union NGOs etc. The task force could replace the existing National Consultative Committee on Employment (NCCE), which was established under Section 72A of the Employment Act 1995 and governed by SI 19 of the Employment (National Consultative Committee on Employment) Regulations 2010.

Conclusion

The above proposals are in line with SCCI Employment Framework 2021, and the Framework for Recovery and Prosperity as identified in the National Private Sector Agenda of SCCI that emphasises on the following principles:

- Shifting focus from job retention to job creation.
- Make work pay – ensuring the incentive mechanisms are in place to encourage full participation in the labour market;
- Flexible labour markets that enhance workforce adaptation by ensuring our labour laws are fit for protecting workers and enabling businesses to innovate, diversify and grow;
- Ensuring active measures are put in place to support workers access the job market through ‘protect the worker not the job’ principles;
- Ensuring our education and training curricula meeting the needs of business in a post COVID 19 environment;
- Promoting entrepreneurship and innovation that create new market demand and generating new employment.
- Promoting multi skilling in the workplace

The COVID pandemic, whose impact has spread socio-economic mayhem globally, has been a wakeup call for us. Many businesses have been impacted significantly resulting in financial difficulties, leading to reduced operation, lay-off or redundancy. Due to the rigidity in our Employment laws and regulations, many were struggling, as they have been unable to move or transform their workforce to adapt to the changing situation. While it is important to ensure workers are protected and their rights are upheld, it is equally important to ensure the laws provide rooms for flexibility and adaptation. Furthermore, it is also important that our employment law will empower business to develop and implement innovate measures to sustain operation and retain workers in expected economic situation or national calamity

or following any order issued by Government as we have witnessed during the current pandemic.

We look forward for further consultation and dialogue with the Ministry in this Employment law reform exercise, towards our common aim to have an updated, flexible and balance employment legislation that addresses and meets all parties' needs in the realities of the world of work today and preparing us for the future of work.