

Seychelles

Employment Act

Employment (Declaration for Distribution of Employment Benefits upon Death) Regulations, 2021

Statutory Instrument 95 of 2021

Legislation as at 6 October 2021

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Employment (Declaration for Distribution of Employment Benefits upon Death) Regulations, 2021
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Seychelles

Employment Act

Employment (Declaration for Distribution of Employment Benefits upon Death) Regulations, 2021

Statutory Instrument 95 of 2021

Published on 6 October 2021

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Commenced on 1 January 2022

[This is the version of this document from 6 October 2021.]

In exercise of the powers conferred by section 71 read with section 70A of the Employment Act, the Minister responsible for employment matters hereby makes the following regulations—

1. Short title and commencement

These regulations may be cited as the Employment (Declaration of Distribution of Employment Benefits upon Death) Regulations, 2021 and shall come into operation on the 1st January, 2022.

2. Application

- (1) These regulations apply to a worker who is an adult.
- (2) Where there is any inconsistency between the provision of any regulation made under the Act and these regulations, the provisions of these regulations shall prevail.

3. Interpretation

In these regulations, unless the context otherwise requires—

- (a) "**authorised person**" means—
 - (i) the employer, where the employer is a natural person;
 - (ii) a partner, where the employer is a partnership;
 - (iii) a director, a managing director, a chief executive officer, where the employer is a body corporate;
 - (iv) a person authorised in writing by the employer to attest such declaration;
 - (v) a notary; or
 - (vii) an Attorney-At-Law;

[Please note: numbering as in original.]
- (b) "**beneficiary**" means the person or persons in favour of whom such declaration shall have been made;
- (c) "**employment benefits**" means any amount of money that an employer is liable to pay a worker arising out of the employment of the worker with the employer and which stands to the credit of the worker with the employer on the date of the death of the worker but excludes any amount due and payable to a worker under a claim of the worker to the employer or a third party relating to

damages for personal injury arising out of, or in connection with, the employment of the worker with the employer.

- (d) "**employer**" means the employer of the worker;
- (e) "**declaration**" means the declaration made by a worker under regulation 4.
- (f) "**witness**" means a natural person who is—
 - (i) an adult;
 - (ii) capable of signing;
 - (iii) not subject to any legal incapacity;
 - (iv) not the spouse, close relative, or a relative by blood or marriage up to the fourth degree, of the worker; or
 - (v) the beneficiary or a person who is directly or indirectly to benefit from the declaration;
- (g) "**register**" means the register made and maintained by the employer under regulation 4(6).

4. Declaration

- (1) A worker may, by a declaration, dispose unconditionally of his or her employment benefits or any part thereof in the event of his or her death for the benefit of a beneficiary, and may by a subsequent declaration or by will revoke or amend a previous declaration.
- (2) A declaration under subregulation (1) shall be made in the form specified in Schedule 1.
- (3) The declaration shall be signed, marked or acknowledged by the worker, and his or her signature, mark or acknowledgment, as the case may be, shall be attested or verified by an authorised person in accordance with the prescribed form.
- (4) Where a worker is incapable of signing the declaration through ignorance or physical disability, the worker shall be deemed to have made the declaration—
 - (a) in case of ignorance, illiteracy or physical incapacity or disability to sign the declaration, if the worker makes his or her mark or prints his or her thumb thereon in the presence of an authorised person and of one witness, after the declaration has been read over to the worker by the authorised person in the presence of the witness, and such mark is attested by the authorised person and the witness in the prescribed form; and
 - (b) in case of physical incapacity or disability to make a mark or to print his or her thumb thereon, if the worker declares or acknowledges in the presence of an authorised person and of a witness his or her assent to such declaration after the same has been read over to the worker by the authorised person in the presence of the witness and such assent and the fact of such physical disability or incapacity is attested by the authorised person and the witness in the prescribed form.
- (5) Where the declaration is attested or verified by a person other than the employer or an authorised person in the employment of the employer, that authorised person shall forward the declaration immediately thereafter to the employer, who shall record it in the register specified in regulation 5(1).
- (6) A worker who by a subsequent declaration or by will revokes, substitutes or varies a previous declaration shall notify the employer of any such revocation, substitution or variation of the previous declaration.
- (7) An employer shall on receiving a declaration under subregulation (2) or a notification of revocation or variation of a previous declaration under subregulation 4(6) issue the worker with a written document acknowledging receipt by the employer of the declaration or notification.

5. Register of declaration

- (1) An employer shall establish and maintain a register in the form specified in Schedule 2 to these regulations containing particulars of declaration and notification of revocation or variation of a previous declaration.
- (2) In addition to maintaining the register, an employer shall on receiving a declaration under regulation 4 (2) or a notification of revocation or variation of a previous declaration under regulation 4(6) maintain a copy of the declaration or notification.
- (3) The register and the copy of the declaration or a notification of revocation or variation of a previous declaration may be kept in an electronic data storage retrieval system, but must be capable of producing copies in paper form as required.
- (4) An employer who fails to establish and maintain the register without reasonable excuse commits an offence and is liable on conviction to a fine not exceeding SCR 20,000.

6. Effect of declaration

- (1) A declaration shall have the effect of a bequest by will, notwithstanding any law to the contrary.
- (2) Where a worker has made a declaration under these regulations which is maintained by an employer and the worker ceases employment with that employer otherwise than by death—
 - (a) the declaration shall be of no effect upon such cessation of employment and shall be non-binding on the employer;
 - (b) the employer shall be under no obligation to transfer the declaration to the worker's new employer.
- (3) Where a worker dies after ceasing employment with the employer and employment benefits, in part or in full, are still due and payable to the worker by the employer, the declaration shall be valid and the employer shall act in accordance therewith in relation to such unsatisfied employment benefits.
- (4) An employer may deduct from the employment benefits any money owed by the deceased worker to the employer under section 33 of the Employment Act or pay the employment benefits or any part thereof in accordance with any valid written instruction given by the worker to the employer in relation to any financial obligations of the worker to a third party.
- (5) In the event of any inconsistency between a written instruction given by a worker to an employer in relation to any financial obligations of the worker to a third party and the declaration, the written instruction shall prevail.
- (6) Subject to subregulations (3), (4) and (5), the amount of the employment benefits shall not form part of the estate or succession of the worker, but shall belong to the beneficiary.

7. Payment under declaration

- (1) Where a worker who has made a declaration under regulation 4 dies, the employer shall pay the beneficiary the employment benefits upon the production of proof of death of the worker and proof of identity of the beneficiary to the employer.
- (2) Where there is more than one beneficiary—
 - (a) in the absence of a declaration to the contrary, the employment benefits or the remainder thereof shall be distributed equally;
 - (b) and a beneficiary does not survive the worker, the employment benefits shall be distributed to the surviving beneficiary.

- (3) Where no beneficiary survives the worker, notwithstanding regulation 6(6), the employment benefits or the remainder thereof shall revert to, and form part of, the estate or succession of the deceased worker.
- (4) The payment of the employment benefits by the employer to the beneficiary under a declaration shall not prejudice the right of any other person claiming to be legally entitled to the employment benefits to recover it from the beneficiary to whom it has been paid or from any person claiming under or through the person to whom it has been paid.
- (5) Where a beneficiary under a declaration fails to claim the employment benefits of a worker within 24 months of the death of the worker, the employer shall vest the employment benefits in the curator under the Curatelle Act.

Schedule 1

Declaration (Regulation 4(2))

I, *[insert name of the worker]* of *[insert address of the worker]* bearer of Seychelles national identity no. *[insert number]* being a worker employed by the employer, do hereby declare that in the event of my death any benefits arising out of my employment with the employer and standing to my credit with the employer are to be disposed of by payment to the beneficiary specified herein.

Name and surname of beneficiary			
Address of beneficiary			
Identity No. of beneficiary			
Relationship of Beneficiary to Worker*			
Contact details of Beneficiary**			
Proportion*			

*optional

**optional for Seychellois worker and mandatory for non-Seychellois worker

Note: Where there is more than one beneficiary, in the absence of a declaration to the contrary, the employment benefits or the remainder thereof shall be distributed equally.

Made on this <i>[insert date of declaration]</i>		At <i>[insert where made]</i>	
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TO BE COMPLETED BY THE WORKER			
<i>[Signature]</i>			
Full Name and Surname			
Address			
Designation			
National Identity No.			
TO BE COMPLETED BY NON-SEYCHELLOIS WORKER			
Nationality			
Passport No.	Expiry Date		
TO BE COMPLETED, WHERE THE WORKER IS INCAPABLE OF SIGNING ON GROUNDS OF IGNORANCE, ILLITERACY OR PHYSICAL DISABILITY			
Particulars of the Witness			
Name and surname of the witness:			
Address of the witness:			
National Identity no. of the witness:			

Insert Mark or Thumb print below
Marked by hand or by thumb print of the worker due to illiteracy or ignorance or physical incapacity or disability to sign, who is known to me, in the presence of the authorised person after the declaration has been read over to the worker by the authorised person in my presence
_____ [sgd])Witness
Physical Disability (Blindness etc ...)
Declared or acknowledged by the worker, who is known to me and who suffers from physical incapacity or disability, in the presence of the authorised person and the witness and who assented to such declaration after the same has been read over to the worker by the authorised person in my presence
_____ [sgd])Witness

TO BE COMPLETED BY AUTHORISED PERSON	
I, the undersigned do confirm that the above declaration was made and signed, marked, declared or acknowledged, as the case may be, by the above-named worker in my presence.	
<i>[Signature]</i>	
Name & Surname	
Address	
Designation	
Name of Employer	

TO BE COMPLETED BY THE EMPLOYER	
I/We, the undersigned employer, acknowledge receipt of this declaration made by the worker	
<i>[Signature]</i>	
Name of employer's representative	
Designation	
Name of Employer	

Schedule 2
Regulation 5(1) and (2)

Particulars of payment			
Details of any written instructions in favour of any other person	Details of third Party		
	Date		
Details of Revocation of, or change to, declaration	Particulars of any change		
	Date of Change or revocation		
Details of Beneficiary	Nationality		
	N.I.N/Passport No.		
	Address		
	Surname		
	Name		
Details of Declaration	Authorised Person		
	Date		
Details of worker	Nationality		
	N.I.N/Passport No.		
	Address		
	Surname		
	Name		

MADE this 4th day of October, 2021.

Patricia Francourt

Minister of Employment and Social Affairs