

REPUBLIC OF KIRIBATI
(No. 9 of 1993)

I assent


Beretitenti
24/11/1993

AN ACT TO AMEND THE PUBLIC FINANCE (CONTROL AND AUDIT) ORDINANCE (CAP. 79);
AND FOR CONNECTED PURPOSES

Commencement:
1993

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

Short title

1. This Act may be cited as the Public Finance (Control and Audit) (Amendment) Act 1993.

Amendment of section 7

2. Section 7 of the Public Finance (Control and Audit) Ordinance (hereinafter referred to as "the principal Ordinance") is amended by repealing the whole of section 7.

Amendment of section 9

3. Section 9 of the principal Ordinance is amended in subsection (2) by repealing the words "\$250,000" and substituting the words "\$500,000".

Amendment of section 23

4. Section 23 of the principal Ordinance is amended by repealing subsection (3).

Amendment of section 25

5. Section 25 of the principal Ordinance is amended in subsection (2) by repealing the words "paid into the Consolidated Fund" and substituting the words "credited to the account of any person entitled to such deposits".

Amendment of section 28

6. Section 28 of the principal Ordinance is repealed.

Amendment of section 39

7. Section 39 of the principal Ordinance is amended by -
 - (a) repealing paragraph (viii) and renumbering paragraph (ix) as paragraph (viii);
 - (b) renumbering paragraph (x) as paragraph (ix);

- (c) " " (xi) " " (x);
- (d) " " (xii) " " (xi);
- (e) " " (xiii) " " (xii);
- (f) " " (xiv) " " (xiii);
- (g) " " (xv) " " (xiv);
- (h) " " (xvi) " " (xv);
- (i) " " (xvii) " " (xvi);
- (j) " " (xviii) " " (xvii); and
- (k) " " (xix) " " (xviii);

Add new Part XI

B. The principal Ordinance is amended by adding at the end of Part VIII the following new part IX as follows -

"PART IX

SANCTIONS AGAINST PUBLIC OFFICERS; RECOVERY OF FUNDS AND LOSSES

Disciplinary sanctions against public officer for mishandling public funds; recovery of same

47.(1) Any public officer who -

- (a) fails without just cause to collect any moneys owed to the Government with the collection of which he is charged;
- (b) is responsible for any improper payment of public moneys (including any payment not duly vouched);
- (c) is guilty of negligence or misconduct in connection with the destruction, damage, or loss of any public moneys, stamps, securities, stores, or other Government property;
- (d) is responsible for causing any financial loss to the Government through failure to obey any order or instruction properly given to him; or
- (e) fails to account for an imprest issued to him within the time period as laid down in the relevant regulation,

shall be guilty of a violation of section D.3 of the National Conditions of Service (or such other standard as may from time to time be in force) and of a breach of the public trust.

(2)(a) If the Minister has reason to believe that a public officer has acted in such a manner as to be guilty of an offence under subsection (1), then he shall so notify the officer and advise him of his potential liability to the Government under this section.

(b) The notice under this subsection shall be in writing and shall -

- (i) describe with particularity the act that is the subject of the notice;
- (ii) demand an explanation in writing within 30 days after the date on which the public officer receives the notice;

(iii) state that, in the absence of an exculpatory explanation satisfactory to the Minister, the public officer will be required to repay to the Government the amount involved and that such repayment may be effected by surcharge of any salary or other payment made by the Government to such officer; and

(iv) describe the public officer's right to appeal any decision made by the Minister to the High Court.

(3)(a) If the Minister fails to receive a satisfactory explanation from the public officer notified under subsection (2) within 30 days after such officer received notice under such subsection; then he shall commence recovery of the amount involved by directing such sums as are necessary to be withheld from such officer's salary or other amounts payable to him by the Government.

(b) If the individual concerned is no longer a public officer and is not receiving a salary or other sums from the government, then the Minister -

(i) shall enter into an agreement with such former officer to repay the amount involved in such instalments and over such period of time as may be appropriate; and

(ii) may require any such agreement to be accompanied by such security, guarantees, or other assurances of payment as he believes to be appropriate.

(c) If -

(i) a former public officer refuses to enter into an agreement under paragraph (b); or

(ii) a public officer ceases to be a public officer before the amount involved has been recovered and refuses to enter into such an agreement,

then the Minister shall bring an action against such former officer in any court of competent jurisdiction on behalf of the Government to recover the amount owed.

(4)(a) Any person against whom action is taken by the Minister under subsection (3) may appeal the action of the Minister to the High Court at any time within 30 days after the Minister commences such action.

(b) The High Court may confirm, alter, or quash the surcharge and any such decision of the High Court shall be final.

(c) Any action, whether by surcharge, agreement, or suit to collect amounts owed to the Government by reason of this section shall be stayed pending the disposition of such appeal.

(5) In any action brought by the Minister under subsection (3)(c), it shall be sufficient for judgment against the defendant if, in the absence of proof to the contrary, it is proved on behalf of the Government that the defendant was a public officer, and -

(a) if the action is based on a loss or deficiency in public moneys, he was guilty of conduct described in subsection (1) and such conduct caused such loss or deficiency; or

(b) if the action is based on the loss, damage, or destruction of government property, the property was the responsibility of the defendant and his negligence or misconduct caused or contributed to such loss, damage, or destruction.

(6)(a) The Minister may waive, terminate, reduce, or refund any amounts recoverable or recovered under this section whenever it appears to him that -

(i) the recovery was made by mistake or is not justified by the circumstances, or

(ii) the loss, destruction, or damage to government property was not due entirely to the negligence or misconduct of the public officer or former public officer."

Enforcement of audit queries

9. Part IX of the principal Ordinance (as amended) is amended by adding at the end thereof a new section as follows -

"Enforcement of audit queries

48.(1) The Director of Audit may require any public officer -

- (a) to respond within a reasonable period of time to any audit question; and
- (b) to submit such records, books, vouchers, or other documents pertaining to the audit as he may find necessary to carry out his duties under this Ordinance;

and any such question or submission or request shall be made in writing and shall state the time period within which a response is required.

(2) Any public officer who fails to comply with a query from the Director of Audit under subsection (1) within the period agreed with the Director of Audit, including any extensions thereof, shall be guilty of a violation of section D.3 of the National Conditions of Service, (or such other standard as may from time to time be in force) and of a breach of the public trust.

(3) On receipt of a written request from the Director of Audit a public officer -

- (a) shall confirm in writing to the Director of Audit receipt of the request; and
- (b) give a date by which the officer will respond to the query.

(4) If a public officer wishes to extend the time in which the response to the audit query is to be given he shall inform the Director of Audit in writing as to the revised date.

(5) If the Director of Audit is not satisfied that the revised date given by the public officer for response to his query is reasonable he may request the public officer to review the date given with a view to bringing the date forward."

This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on 13th December 1993 and is found by me to be a true and correctly printed copy of the said Bill.

[Signature]
Clerk to the Maneaba
ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this 1st day of February, 1994.

[Signature]
Clerk to the Maneaba
ni Maungatabu

PUBLIC FINANCE (CONTROL AND AUDIT) (AMENDMENT) ACT 1993

EXPLANATORY MEMORANDUM

This Act seeks to amend the Public Finance (Control and Audit) Ordinance as follows -

1. Section 2. This section purports to repeal the whole of section 7 as this section appears to be undesirable if not unconstitutional as it authorises an advance by warrant to be made from the Consolidated Fund without any requirement or obligation to report about such advance to the Cabinet and the Maneaba.

Presently under the Constitution (section 109) advances made from the Consolidated Fund must be reported to the Maneaba via a Supplementary Appropriation Bill in which such advance must be included. This requirement of reporting the advance to the Maneaba however does not apply to an advance by warrant made from the Consolidated Fund relating to -

- (a) an expenditure authorised by an Appropriation Act; and
- (c) an expenditure authorised under section 110 (expenditure in advance of appropriation) and section 111 (delay in an Appropriation Act owing to dissolution); and
- (c) a statutory expenditure which is an expenditure charged on the Consolidated Fund by virtue of any of the provisions of the Constitution or by virtue of any provision of any other law in force in Kiribati (sections 108 and 116).

In reference to (c) one could argue that the provisions of section 7 of the Public Finance (Control and Audit) Ordinance fits within the provisions of sections 108 and 116 of the Constitution as, being a provision of statute law, it authorises an advance by warrant to be made from the Consolidated Fund in the amount not exceeding \$500,000 for the purposes set out in that section. Hence a statutory expenditure of which reporting to the Maneaba via a Supplementary Appropriation Act is not required.

Even if this contention were correct which is arguable the advancing of sums of money from the Consolidated Fund without accounting for it to the Cabinet and the Maneaba is, on public policy most undesirable.

- 2. Section 3. This section seeks to increase the amount of an advance that may be made from the Consolidated Fund from the existing \$250,000 to \$1,000,000 as the later is more realistic in terms of financial commitments of Government and inflation.
- 3. Section 4. This section repeals subsection 3 of section 23 as financial regulations of United Kingdom no longer apply to Kiribati.
- 4. Section 5. This section enables the Chief Accountant to credit any interest or dividend to the account of any person entitled to such deposits as are administered by the Chief Accountant.
- 5. Section 6. This section repeals section 26 so that any deposits with Governments would not be used for making any advances for any purpose. The amendment is also called for in view of the proposed repeal of section 7.
- 6. Section 7. The amendments under this section are consequential upon the repeal of section 26.
- 7. Section 8. This is an important section as it provides for the first time disciplinary sanctions against public officers or employees for mishandling of public funds and recovery of the same.

8. Section 9. This deals with enforcement of audit queries.

Michael N. Takabwe
The Attorney General
5 July 1993

LEGAL REPORT

I hereby certify my opinion that none of the provisions of the above Act conflict with the Constitution and that the Beretitenti may properly assent to the Act.

Michael N. Takabwe
The Attorney General
24 December 1993