

Small Enterprise Development Act 2001

REPUBLIC OF KIRIBATI

(No.2 of 2001)

I assent

Teburoro Tito

Beretitenti
27/06/2001

AN ACT TO PROMOTE, AND ASSIST SMALL ENTERPRISES BY ESTABLISHING THE PRIVATE SECTOR CONSULTATIVE COMMITTEE AND THE CREATION OF A SMALL ENTERPRISE GUARANTEE CORPORATION AND FOR CONNECTED PURPOSES

Commencement:
2001

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

PART I PRELIMINARY

Short Title

1. This Act may be cited as the Small Enterprise Development Act 2001.

Commencement

2. This Act shall come into operation on such date as the Beretitenti, acting in accordance with the advice of the Cabinet may by notice appoint.

Interpretation

3. In this Act, unless the context otherwise requires -

"agribusiness" means any enterprise engaged in poultry, livestock, vegetable and crop production;

"Board" means the Board of Directors of the Small Enterprise Guarantee Corporation;

"business" means any enterprise engaged in manufacturing, processing, production, agribusiness, tourism, wholesale and retail trade, industrial and business services, including inter-island and exports to international markets;

"Committee" means the Private Sector Consultative Committee established by Section 5;

"Corporation" means the Small Enterprise Guarantee Corporation established by Section 11;

"Foreign investors" means those who are engaged in business in Kiribati and whose licenses have been issued by the Foreign Investment Commission pursuant to the Foreign Investment Act 1985;

"large scale enterprise" means any person, natural or incorporated or association of persons engaged or proposing to become engaged in carrying on of business the total assets of which, inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situated, has a value of more than \$500,000;

"Private sector" means any person, natural or incorporated or association of persons engaged in a business or economic activity or any developmental efforts, operating in Kiribati, the majority voting powers of which is not government, and includes foreign investors;

"Small Enterprises" means any person, or incorporated association of persons engaged or proposing to become engaged in carrying on of business in Kiribati of which inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situated, must have a value of not more than \$500,000.

PART II ELIGIBILITY

Eligibility for assistance

4. (1) To qualify for assistance, training, incentives and promotion or loan or lease guarantees under this Act or by the Corporation, a small enterprise must meet the following criteria namely that:

- a) it shall be duly registered with the appropriate agencies as presently provided by law or as provided by rules and regulations established pursuant to this Act; and
- b) it shall be one hundred percent (100%) owned and capitalised by Kiribati citizens if it is a single proprietorship, cooperatives, self-help entrepreneurial groups, or associations; and

c) it shall be engaged in fishing operations, manufacturing, processing, production, agribusiness, tourism, wholesale and retail trade, industrial and business services, inter-island trade and export to international markets; and

but it shall not:

be a branch, nor a subsidiary, nor a division of a large scale enterprise not owners or employees of the enterprise; provided that this restriction shall not preclude a small enterprise from accepting subcontracts from large enterprises or firms joining in co-operative activities with other small enterprises.

(2) Government owned or controlled corporations and foreign companies or investors or enterprises are specifically disqualified from any assistance under this Act and they shall not have access to any services offered by the Corporation.

PART III
THE PRIVATE SECTOR CONSULTATIVE COMMITTEE

Establishment of committee

5. (1) There is hereby established the Private Sector Consultative Committee.
(2) The Committee shall be an advisory body to the Minister, and it shall act in accordance with the advice of the Minister, in the exercise of its powers and the performance of its functions under this Act.

Composition and Organisation

6. (1) The Committee shall comprise the following members ex-officio:-

a) ex officio -

- (i) Secretary of Commerce, Industry and Tourism who shall be Chairperson;
 - (ii) Secretary of Natural Resources Development;
 - (iii) Director of the National Economic Planning Office of the Ministry of Finance and Economic Planning;
 - (iv) General Manager of the Development Bank of Kiribati;
 - (v) General Manager of the Bank of Kiribati;
 - (vi) President of the Kiribati Chamber of Commerce;
 - (vii) a representative of a non-governmental organisation to be appointed by the Minister;
 - (viii) a representative of Co-operatives to be appointed by the Minister upon nomination by the Secretary of the Ministry of Labour, Employment and Co-operatives; and
- b) any other person not being an employee or a public officer of the Government, a corporation, a company wholly or partly owned by the Government or a local government council, appointed by the Minister, acting in accordance with the advice of the Cabinet.

(2) The Vice-Chairperson shall be from the private sector and elected by the members of the Committee for a one (1) year term.

(3) A member of the Committee may, with the approval of the Minister in writing, appoint an official with appropriate qualifications as his permanent alternate representative who shall, in the absence of the member, stand in place of that member for all purposes of this Act and who shall be eligible to vote in any meeting of the Committee which he attends.

(4) The Committee may, from time to time, co-opt a temporary member to the Committee from other government ministries and organisations or private sector organisations and individuals or donor agencies to participate in any of its meetings, but who shall not be entitled to vote.

(5) The Ministry shall provide the secretariat and administrative services to the Committee for the purpose of performing its functions under this Act.

Meetings

7. (1) Subject to subsection (2), all meetings of the Committee shall be held at South Tarawa only at least once in every two months at such times and places as determined by the Chairperson or within one week at the request of seven (7) members, three (3) of whom are from the private sector.

(2) The Meeting of the Committee shall be convened by giving at least 14 days written notice to all members of the Committee before any meeting of the Committee is duly held.

(3) A quorum of the Committee will be six (6) members, provided that at least two (2) of the six (6) members are from the private sector and no vacancy in membership of the Committee shall impair the right of a quorum to exercise all the rights and perform all the duties of the Committee.

(4) The Chairperson shall preside at meetings. In his absence the Vice-Chairperson shall preside.

(5) In the absence of both the Chairperson and the Vice-Chairperson, the members shall elect a temporary Chairperson from those present.

(6) The decision of the majority of the members present at a meeting of the Committee shall be a decision of the Committee on that question.

(7) Subject to the provisions of this Act and any regulations made under this Act the Committee may regulate its procedure in such manner as it thinks fit.

Remuneration

8. When they attend a meeting of the Committee outside normal working hours Committee members shall receive such remuneration as may be determined by the Minister acting in accordance with the advice of the Cabinet and expenses reasonably incurred by them in respect of their attendance at Committee meetings.

Responsibilities of Committee

9. The Committee shall do all things reasonably necessary for or in connection with the promotion and development of small enterprises in Kiribati.

Regulations

10. In consultation with the Minister of Finance and Economic Planning, the Minister of Commerce, Industry and Tourism, acting in accordance with the advice of Cabinet, may make such regulations as he deems necessary for carrying out Parts I, II and III of this Act into effect and without restricting the generality of the foregoing may make Regulations respecting

- a) rules and regulations, as well as procedural and documentary requirements in the registration, financing and other activities relevant to small enterprises;
- b) after consultation with the Ministry of Finance and Economic Planning, fiscal incentives for small enterprises such as but not limited to duty exemption for capital equipment and spare parts, tax incentives including pioneer status, and bonded warehousing;
- c) national and foreign funding for small enterprise development;
- d) formulating a comprehensive small enterprise development plan to be integrated into the National Development Strategy and the Medium Term Strategy;
- e) the promotion of the productivity and viability of small enterprises, and assisting relevant government agencies and the provision of financial and non-financial services such as:
 - (i) facilitation of assistance and guidance to enable greater access to credit; to encourage development of other modes of financing such as leasing and venture capital activities; to provide effective credit guarantee schemes, including setting up of credit records and information systems and to decentralise loan approval mechanisms;
 - (ii) provision of lower credit financing fees, which may include incentives for prompt credit payments, arrangements tying amortisation to business cash flows, effective substitution of government guarantee cover on loans for the borrower's lack of collateral;
 - (iii) provision of business training courses, technical training for technicians and skilled labourers and continuing skills upgrading programs;
 - (iv) provision of labour-management guidance, assistance and improvement in the working conditions of employees in small enterprises;
 - (v) provision of guidance and assistance regarding product quality, and product development and diversification;
 - (vi) provision of information, guidance and assistance for the adoption of improved production techniques and appropriate commercialised technologies for product development and for increased utilisation of indigenous raw materials;
 - (vii) provision of assistance in marketing and distribution of products through local supply-demand information, industry and island profiles, overseas marketing promotion, domestic market linkaging and the establishment of common service facilities such as common bonded warehousing, agro processing, marine processing and drying facilities, ice plants, refrigerated storage, and co-operative trucking facilities;
 - (viii) information dissemination campaigns and entrepreneurship education and environmental awareness activities.
- f) the submission to Cabinet and the Maneaba ni Maungatabu, of a yearly or more frequent report on the status of small enterprises in the country, including the progress and impact of all relevant government policies, programs and legislation as well as private sector activities;
- g) Any matter or thing which may be required or deemed necessary to be done under Parts I, II and III of this Act.

PART IV

THE SMALL ENTERPRISE GUARANTEE CORPORATION

Establishment

11. (1) There is hereby established a corporation called the Small Enterprise Guarantee Corporation.

(2) The Corporation shall be a body corporate having perpetual succession, common seal, the right to hold and dispose of real and personal property and to sue and be sued, and to do and suffer all acts and things that a body corporate may by law do or suffer.

(3) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Corporation affixed to a document and shall presume in the absence of evidence to the contrary that it was duly affixed.

Purposes

12. The general purposes for which the Corporation is organised are:

- a) To establish a loan and lease guarantee scheme for eligible small enterprises, under this Act, under terms and conditions adopted by its Board;
- b) To engage in the business of providing, promoting, developing and widening in both scope and service various alternative modes of financing for small enterprises, including but not limited to, indirect project lending, venture capital, financial leasing, and second mortgage lending;
- c) To provide second guarantees re-insurance on credit and investment guarantees made by other credit guarantee corporations and other institutions in support of small enterprises;
- d) To engage in any other trade or business which can, in the opinion of the Board, be advantageously carried on in connection with or auxiliary to the foregoing business;
- e) To exercise all the general powers conferred by law upon corporations as are incidental or conducive to the attainment of this Act, including power to promulgate articles of incorporation, by-laws, rules and regulations, guiding programs and policies in order to meet the policies and objectives of this Act.

Liability of the Corporation

13. The Corporation shall only become liable under any of its guarantees upon proof that the loan which it supports has become past due and the terms of the guarantee require acceptance of such liability.

Capitalisation and Funding

14. (1) The Corporation shall have an authorised capital stock of one million dollars (\$1,000,000).

(2) The initial capital of Five Hundred Thousand Dollars (\$500,000) shall be established by the Government of Kiribati, and shall be released:

- (a) upon the constitution of the Board;

(b) where possible and available upon funds of not less than \$500,000 being provided under subsection (3).

(3) Additional capital shall come from a pool of funds to be contributed in the form of equity investments in common stocks by private or government financial institutions, individuals and corporations both from Kiribati and abroad, trust placements of excess and unused funds of existing government owned or controlled institutions, grants by bilateral and multilateral official development assistance funds and additional appropriations by the Maneaba ni Maungatabu.

Board of Directors

15. (1) The Corporation shall be governed by a Board responsible to the Minister of Finance and Economic Planning in the exercise of its powers and the performance of its functions under this Act, consisting of five (5) members including:

- a) Secretary of the Ministry of Finance and Economic Planning, who shall serve as the Chairperson;
- b) Secretary of the Ministry of Commerce, Industry and Tourism, who shall serve as the Vice-Chairperson;
- c) an appointee of the Minister of Finance and Economic Planning acting in accordance with the advice of Cabinet, being a person not otherwise a member of the Committee;
- d) two (2) members from the private sector appointed by the Minister of Finance and Economic Planning acting in accordance with the advice of Cabinet; and each private sector member shall serve for a three year period and shall be eligible for reappointment.

(2) A private sector member of the Board may resign his office by notice in writing to the Minister of Finance and Economic Planning.

(3) The Minister of Finance and Economic Planning acting in accordance with the advice of Cabinet may appoint another person in place of a private sector member who resigns or dies for the remainder of the period of the private sector member who ceased to hold office.

(4) The chief executive of the Corporation will act as the Secretary of the Board.

Meetings

16. (1) Subject to subsection (2), the meetings of the Board shall be held at least once every two months in South Tarawa at such times and places as determined by the Board or within ten days at the written request of at least three (3) members.

(2) The Meeting of the Board shall be convened by giving at least 14 days prior written notice to all members of the Board before any meeting of the Board is duly held.

(3) The Chairperson shall call a meeting whenever required to do so in writing by at least three (3) members.

- (4) Three (3) members shall make a quorum.
- (5) The Chairperson shall preside at meetings, and in his absence, the Vice-Chairperson shall preside.
- (6) In the absence of the Chairperson and the Vice-Chairperson, the members shall elect a temporary Chairperson from those present.
- (7) The decision of the majority of the members present at a meeting of the Board shall be a decision of the Board on that question.
- (8) In the event of an equality of votes on any question the Chairperson of the meeting shall have a casting vote.
- (9) Minutes in proper form shall be kept for each meeting and confirmed at the next meeting.
- (10) Subject to this Act and any regulations hereunder and of any other statutory instrument applicable, the Board may regulate its own proceedings.

Disclosure of Interest

17. (1) A member of the Board who in any way directly or indirectly has a financial interest in any guarantee application to be decided by the Board shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of the interest to the Board and such member shall not take part in any deliberation or determination by the Board as to that application.
- (2) A member referred to in subsection (1) shall be disregarded for the purpose of constituting a quorum.
- (3) Any member of the Board who contravenes subsection (1) commits an offence and shall be liable upon conviction to a fine of \$1000 or to imprisonment for 1 year or both. The court shall further order that the member shall vacate his seat on the Board.

Powers and Functions of the Board

18. The Board shall have such powers and functions to do all things reasonably necessary to administer the Corporation subject to the provisions of this Act including:
 - a) the power to develop and implement loans and lease guarantee and financing programs reasonably necessary for or in connection with providing small enterprises access to finance from the Development Bank of Kiribati, the Bank of Kiribati or any other commercial or development bank or financing institution;
 - b) the power to identify, negotiate and enter into agreements for additional capital for the Corporation in the form of equity investments in common stocks, trust placements of excess or unused funds of existing government agencies, subscription from government owned or controlled corporations, and investments of private financial institutions, individuals and corporations, both from Kiribati and abroad; or grants by bilateral and multilateral official development assistance funds;

- c) the authority to borrow money and to issue securities, promissory notes, or other obligations under such general conditions and subject to such limitations and regulations as the Minister of Finance and Economic Planning acting in accordance with the advice from Cabinet, may prescribe;
- d) the power to invest the capital of the Corporation without impairing its ability to meet guarantee claims made, to set fees and administrative charges, to meet its administration costs;
- e) the power while continuing to bear final responsibility, to delegate to any of the officers or employees of the Corporation any of its powers; and any such delegation, subject to its terms, shall remain in force until revocation despite any change in the holder of the office or the position of employment; and delegation by the Board shall be revocable at will by the Board and shall not preclude the exercise of the delegated powers by the Board.

Remuneration

19. Board members shall receive such remuneration as may be determined by the Minister of Finance and Economic Planning acting in accordance with the advice of the Cabinet and expenses reasonably incurred by them in respect of their attendance at Board meetings; so that employees of Government shall only receive such amount for attendances outside working hours.

Officers and Staff

20. (1) The Chief executive of the Corporation shall be engaged, and appointed by the Minister of Finance and Economic Planning, acting in accordance with the advice of Cabinet.

(2) The Board in coordination with its chief executive in consultation with the Minister of Finance and Economic Planning shall fix the terms for and appoint other officers and employees.

Non-Liability of Board Members and Officers

21. No Board Members or officers of the Corporation shall be personally liable for any act or default of the Corporation done or omitted to be done in good faith in carrying out the provisions of this Act.

Accounts

22. (1) The Corporation shall, in accordance with Part VII of the Public Finance (Control and Audit) Ordinance (Cap. 79), at the expiration of each calendar year prepare with reference to that year a balance sheet and a profit and loss account and profit and loss appropriation account.

(2) The accounts of the Corporation shall be audited by or under the authority of the Auditor General in accordance with Part VII of the Public Finance (Control and Audit) Ordinance (Cap. 79).

(3) Six months from the end of each financial year, the Corporation shall prepare a detailed report of its operations and proceedings during the year together with the audited financial

statements, which documents shall be sent to the Minister of Finance and Economic Planning, who shall table them before the Maneaba ni Maungatabu.

(4) The Corporation shall, at all reasonable times upon demand made by the Minister of Finance and Economic Planning or the Auditor General or their authorised representative, afford to them full liberty and provide such assistance as is necessary, to examine the accounts of the Corporation; and it shall furnish them with documentation and other information without reservation, relating to all transactions and business operations of the Corporation.

**PART V
REGULATIONS**

Regulations

23. In consultation with the Minister of Commerce Industry and Tourism, the Minister of Finance and Economic Planning, acting in accordance with the advice of the Cabinet may make such Regulations as he deems necessary for carrying out Parts IV and V of this Act into effect and without restricting the generality of the foregoing may make Regulations respecting:

- (a) the procedures, terms and conditions, additional eligibility criteria, and other matters which may be required for the implementation of the loan and lease guarantee schemes as provided;
- (b) the prescription of forms to be used for the purpose of giving effect to the provisions of Parts IV and V of this Act;
- (c) the level of fees and other charges to be charged on loan or lease guarantees as provided or for any matter or thing to be done by the Corporation;
- (d) any matter or thing which may be required or as the Minister of Finance and Economic Planning deemed necessary to be done under Parts IV and V of this Act by the Corporation.

**SMALL ENTERPRISE DEVELOPMENT BILL 2001
EXPLANATORY MEMORANDUM**

1. Economic development in Kiribati can largely be achieved through the development of the private sector. A large part of the private sector in Kiribati is small-scale enterprises. Small enterprises are defined (Part 1 Section 3.1) as any person, natural or corporate or body of association of persons engaged or proposing to be engaged in carrying on a business with whose total assets, inclusive of those arising from loans but exclusive of land on which the particular business entity's office, plant and equipment are situated, must have a value of not more than \$500,000.

2. Experience of nations has shown that small-scale enterprises have the potential for more employment generation and economic growth, and therefore can provide a strong economic and industrial foundation for the country. However, only through a conducive policy environment can free markets, competition, free entry into business and opportunities for the expression and growth of individual small-scale entrepreneur's initiatives and judgements is

assured. The establishment of such an environment is basic not only to the economic well being but to the future security of the nation. Such security and well being can not be realised unless the actual potential and capacity of small enterprises is encouraged and developed.

3. The proposed Small Enterprise Development Bill establishes the Government's policy to promote, support, strengthen and encourage the growth and development of small enterprises in all productive sectors of the economy. The Government assists, aids, counsels, and develops the small enterprises by establishing policies and integrated programs of assistance, which will –

- enhance their ability to compete effectively and efficiently;
- enhance their ability to export;
- facilitate technology transfers;
- increase the access of small enterprises to long-term and short-term capital;
- provide business information to enhance their ability to tap local and international markets; and
- utilise local resources.

4. Part III Clause 5 establishes the Private Sector Consultative Committee (PSCC). This body shall be an advisory body to the Minister.

5. Providing a positive environment for small enterprises, means providing small enterprises access to finance. This is one of the major problems of the small enterprises as they do not have, or lack the security required by financing institutions. The non-financing services offered by MCIT and other government institutions and efforts of the private sector to expand or establish new business will only go as far as the enterprises will have access to finance. The establishment of the corporation, which will manage the guarantee fund will also mobilise the savings of the Kiribati nationals with the Bank of Kiribati, which are now largely invested overseas, for the development of the country.

6. Part IV Clause 11, establishes a Small Enterprise Guarantee Corporation, which will implement a loan and lease guarantee scheme for qualified small enterprises. Clause 12 provides for the general purposes of the Corporation, one of which is to establish a loan and lease guarantee scheme for qualified small enterprises. Clause 14 provides for the capitalisation and funding of the Corporation. It will be established with a capitalisation of \$1 million, \$0.5 million of which will be provided by the Government and the other \$0.5 million will be from investments of government corporations financing companies, individuals and grants from donor agencies. The fund will be used to guarantee less than the full amount of the borrowing of eligible small enterprises, thereby enhancing their access to finance.

7. Part V Clause 23 provides that the Minister of Finance and Economic Planning after consultation with the Minister of Commerce, Industry and Tourism has power to prescribe Regulations for the procedures, terms and conditions, etc. for the implementation of the loan and lease guarantee schemes.

Michael N. Takabwebwe
Attorney General
25 April 2001