

Development Bank of Kiribati Act 1986

THE REPUBLIC OF KIRIBATI
(No. 2 of 1986)

I assent,

(Signed) I. Tabai
Beretitenti
17/11/86

AN ACT TO ESTABLISH THE DEVELOPMENT BANK OF KIRIBATI: AND FOR CONNECTED PURPOSES

Commencement:

MADE by the Maneaba ni Maungatabi) and assented to by the Beretitenti.

PART I PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Development Bank of Kiribati Act 1986.
- (2) This Act shall come into operation on such date as the Minister may by notice appoint.

Interpretation

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

"the appointed date" means the date appointed under subsection (2) of section 1 of this Act;

"the Bank" means the Development Bank of Kiribati established by section 3 of this Act;

"the Board" means the Development Bank of Kiribati Board established by section 9 of this Act;

"borrower" means any person to whom a loan has been granted by the Bank under this Act and includes his or its personal representatives, successors and assigns;

"Chairman" and "Deputy Chairman" means the chairman and deputy Chairman, respectively, of the Board;

"finance" includes financial assistance;

"financial year" in relation to the Bank, means –

(a) the period beginning with the coming into operation of this Act and ending on the 31st December next following; and

(b) thereafter, the period of 12 months ending the 31st December in any year;

"the General Manager" and the Deputy General Manager" means the General Manager and the deputy general manager of the Bank appointed respectively under section 23 of this Act;

"liability" means liability of every kind and includes obligations of every kind, whether arising under or by virtue of an instrument or otherwise and whether liquidated or unliquidated, certain or contingent, accrued or accruing;

"the Loans Board" means the National Loans Board established under the National Loans Board Ordinance;

"member" means a member of the Board.

PART II ESTABLISHMENT, FUNCTIONS, POWERS AND POLICIES OF THE BANK

Establishment of the Bank

3. A body by the name of the Development Bank of Kiribati is hereby established.

Incorporation of the Bank

4. (1) The Bank –

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(2) All courts, Judges and persons acting judicially shall take judicial notice of the common seal of the Bank affixed to a document and shall presume that it was duly affixed.

Dissolution and transfer to the Bank of assets and liabilities etc of the Loans Board

5. The provision of Schedule I to this Act shall have effect as to the dissolution, the transfer to the Bank of assets and liabilities and officers or employees of the Loans Board.

Functions of the Bank

6. The functions of the Bank are –

- (a) to provide finance by making loans to any person –
 - (i) for purposes of primary production; or
 - (ii) for the establishment, development or acquisition (in whole or in part) of industrial or commercial undertaking; and
- (b) to provide advice and assistance with a view to promoting the efficient organisation and conduct of primary production or of industrial or commercial undertakings.

Powers of the Bank

7. (1) For the purposes of carrying out its functions under this Act, the Bank may carry on

banking business.

(2) Without limiting the generality of subsection (1) of this section, in addition to any other powers conferred on it by this Act, the Bank, subject to this Act, has power –

- (a) to receive money on deposit;
- (b) to borrow or lend money;
- (c) to buy, sell, discount and rediscount bills of exchange, promissory notes and Treasury Bills;
- (d) to buy and sell Government securities and other securities;
- (e) to establish, credit and give guarantees;
- (f) to issue bills and drafts and effect transfers of money;
- (g) to underwrite loans and issues of capital;
- (h) to buy, sell or invest moneys held by the Bank in shares, stocks, bonds or debentures, Treasury Bills, and other capital interest or securities of body corporates incorporated in or outside Kiribati;
- (i) to issue debentures, bonds, stocks, and other securities;
- (j) to acquire or otherwise purchase, exchange lease or sublease and sell, lease or sublease land for use by the Bank and other persons;
- (k) to finance the purchase, sale or lease of machinery, plant, equipment, land, premises, materials, goods and articles of every description including the purchase, resale, lease thereof and the making of loans on the security of a mortgage or an assignment of interest in any such transaction;
- (l) to form, acquire or promote subsidiaries and body corporates in the manner permitted by law;
- (m) to form or acquire an interest in a partnership, firm or enterprise;
- (n) to participate in the management of an enterprise which has received some form of financing from the Bank;
- (o) to act as agent for foreign and international bodies in the financing of economic development in Kiribati;
- (p) to take such stage as may be necessary to protect or recover its financial interest in any enterprise;
- (q) to provide technical assistance and advice in connection with projects or undertakings it finances;
- (r) to make charges for the provision of any of its services;
- (s) to make payments of any operating costs charges and any expenses lawfully incurred by the Bank; and
- (t) to do anything incidental or conducive to the better exercise of its powers and functions under this Act.

(3) The powers conferred by subsection (2)(j) of this section is subject to and shall be exercised and performed in accordance with other laws, and in particular that paragraph does not authorise the Bank to acquire, lease or sublease native lands otherwise than in accordance with the law.

Security

8. A loan by the Bank under this Act may be made –

- (a) without security; or
- (b) subject to the provision of such security as the Bank thinks necessary.

The Board

9. (1) A Development Bank of Kiribati Board is hereby established.

(2) The Board shall be constituted as provided by Part III of this Act.

Policies of the Bank

10. (1) Subject to this Act, the Board –

- (a) is responsible for determining the policy of the Bank in relation to any matter; and
- (b) has power to take such action as is necessary to ensure that effect is given by the Bank to the policy so determined.

(2) It is the duty of the Board, within the limits of its powers to ensure that the policy of the Bank –

- (a) is directed to the greatest advantage of I-Kiribati; and
- (b) has due regard to –
 - (i) the stability and balanced development of the national economy; and
 - (ii) the social and economic advancement of the indigenous population of Kiribati.

Principles applying in the provision of finance

11. (1) In determining whether or not any loan or other assistance shall be given to any person for any project, the Bank –

- (a) shall have regard primarily to the prospects of his operations or project becoming, or continuing to be successful, and the prospects of any money lent to him by the Bank being repaid to the Bank;
- (b) shall not necessarily have regard to the value of the security available in respect of the loan for the project;
- (c) shall have regard to the degree to which the project is or will become or remain of value to the economy of Kiribati; and
- (d) shall have regard to the degree to which the project is or will be or will remain owned or effectively controlled by persons who are I-Kiribati or who are ordinarily resident in Kiribati.

(2) Subject to this Act, the Bank shall not give any loan or other assistance to a person to enable him to acquire goods for use otherwise than in the course of his business.

(3) The Board shall –

- (a) from time to time inform the Minister of the policies of the Bank; and
- (b) furnish to the Minister such information in relation to the matters referred to in section 7(2) as the Minister may require.

(4) In the event of a difference of opinion whether the policy of the Bank –

- (a) is directed to the greatest advantage of I-Kiribati people; and
- (b) has due regard to –
 - (i) the stability and balanced development of the national economy; or
 - (ii) the social and economic advancement of the indigenous population of Kiribati,

the Minister and the Board shall endeavour to reach agreement.

(5) If the Minister and the Board are unable to reach agreement, the Board shall immediately furnish to the Minister a statement in relation to the matter in respect of which the difference of opinion has arisen.

(6) The Beretitenti, acting in accordance with the advice of the Cabinet, may then by order in writing determine the policy to be adopted by the Bank.

(7) The Minister shall inform the Board of the policy determined under subsection (6) of this Act.

(8) The Board shall ensure that effect is given to the policy while the order remains in force.

Accepted Banking principles to be applied

12. In performing its functions under this Act the Bank shall be guided by accepted banking principles.

PART III THE DEVELOPMENT BANK OF KIRIBATI BOARD

Constitution of the Board

13. (1) The Bank and its operations shall be governed by a Board which shall consist of not more than 7 members who shall be appointed by the Minister and at least two shall be persons who are not officers or employees in the public service.

(2) In appointing the members the Minister shall have regard to the need to ensure, so far as is practicable, that persons having relevant experience in finance, commerce, industry and the professions are so appointed.

(3) A member appointed under this section who is an officer or employee in the public service subject to good behaviour holds office for a period of not more than 3 years as specified in the

instrument of appointment or until he ceases to be a public officer or removed under section 16 of this Act and shall be eligible for reappointment.

(4) A person appointed under this section who is an officer or employee in the public service—

- (a) shall be appointed for a period not exceeding 3 years;
- (b) holds office subject to good behaviour; and
- (c) is eligible for re-appointment.

(5) In the event of a member appointed under this section ceasing to hold office before the end of the period of his appointment and another person is appointed in his place, the period of that appointment is the remainder of the period of office of the member ceasing to hold office.

(6) No officer or employee of the Bank shall be a member of the Board.

Remuneration of members

14. A member not being a public officer or employee in the public service, shall be paid by the Bank such remuneration as the Board determines.

Oath and affirmation of office and declaration of secrecy

15. Before entering on the duties of his office, a member shall take an oath or make an affirmation and shall make and subscribe to a declaration of secrecy set out in Schedule II to this Act before a magistrate or judge.

Vacation of office of member of Board

16. If a member appointed under section 13 of this Act —

- (a) becomes permanently incapable of performing his duties;
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (c) resigns his office by writing under his hand addressed to the Minister;
- (d) is absent, except on leave granted by the Board from three consecutive meetings of the Board; or
- (e) fails to comply with his obligations under section 21 of this Act,

the Minister shall terminate his appointment.

Chairman and deputy chairman

17. (1) The Minister shall appoint one of the members to be a Chairman of the Board and another such member to be Deputy Chairman for a period of one year.

(2) The Chairman and the Deputy Chairman shall hold office as Chairman for their respective periods of appointment of one year or until they respectively cease to be members of the Board whichever first happens.

(3) The Chairman or Deputy Chairman may, by writing under his hand addressed to the Minister resign his office as Chairman or Deputy Chairman.

Secretary

18. The General Manager appointed under section 23 of this Act shall be the Secretary of the Board and shall ensure that minutes of the proceedings at each meeting of the Board are kept by him in such form as the Board directs and shall perform such other duties and responsibilities as the Board may from time to time determine.

Meetings of the Board

19. (1) The Board shall meet not less than once in every two months at such times and places as the Board determine or as the Chairman or in his absence the Deputy Chairman directs.

(2) The Chairman or in his absence the Deputy Chairman shall convene any meeting of the Board including any special meeting which may be advised in writing by any 4 members of the Board.

(3) No meeting of the Board shall be convened and held unless –

- (a) seven days notice in writing is given to members prior to the date of such meeting;
- (b) time and place of the meeting are specified in the notice; and
- (c) the matters to be discussed or considered in such meeting are specified in the notice.

(4) At a meeting of the Board –

- (a) four members of whom the Chairman or Deputy Chairman is one, is a quorum;
- (b) if the Chairman is present he shall preside; and
- (c) all matters shall be decided by a majority of the votes of the members present and voting.

(5) A resolution in writing signed by all the members of the Board, shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held.

Minutes and proceedings

20. (1) The Minutes and records of proceedings in the proper form of each meeting of the Board shall –

- (a) be kept by the Secretary of the Board; and

(b) be confirmed by the Chairman or in his absence by the Deputy Chairman as the case may be and the Secretary as soon as practicable thereafter at the subsequent meeting.

(2) No act done or proceedings taken under this Act shall be questioned on the ground of the existence of any vacancy on or defect in the constitution of the Board.

(3) Any minutes made of a Board meeting shall, if duly signed by the Chairman or in his absence the Deputy Chairman and the Secretary be receivable as evidence in all legal proceedings without further proof, and every meeting of the Board in respect of which minutes have been so made shall be deemed to have been duly convened and held and all the members thereof to have been duly qualified to act.

Disclosure of interest

21. (1) A member who is directly or indirectly interested in a contract made, or proposed to be made or in any other matter before the Board shall disclose the nature of his interest at the first meeting of the Board at which he is present after the relevant facts have come to his knowledge.

(2) A disclosure under subsection (1) of this section shall be recorded in the minutes of the Board and after the disclosure the member shall –

(a) not take part in any deliberation or decision of the Board with respect to the contract or other matter;

(b) absent himself while deliberations with respect to any such contract or other matter are taking place, if requested to do so by the person presiding at the meeting; and

(c) be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

Committee and delegation

22. The Bank from time to time may –

(a) appoint a committee of the Board consisting of any three or more members; or

(b) delegates to –

(i) a member of the Board; or

(ii) a Committee of the Board,

the power and authority to perform on its behalf any duty subject to such conditions as the Board may determine.

PART IV OFFICERS OF THE BANK

General Manager

23. (1) There shall be a General Manager and a Deputy General Manager of the Bank who—
(a) shall be appointed by the Board after consultation with the Public Service Commission;
(b) shall be appointed for such period (not exceeding four years) as may be specified in the appointment;
(c) hold office subject to good behaviour; and
(d) are eligible for re-appointment.

(2) The remuneration and terms and conditions of service of the General Manager and the Deputy General Manager shall be determined by the Board.

(3) All remuneration and other allowances and expenses payable to the General Manager and Deputy General Manager shall be paid out of the funds of the Bank.

(4) The General Manager shall subject to this Act manage the Bank, and in relation to the management of the Bank, shall act in accordance with the policy and with the directions of the Board.

(5) The Deputy General Manager shall perform such duties as the General Manager directs and in the event of a vacancy in the office of the General Manager the Deputy General Manager shall, during such vacancy, be deemed to act as a Secretary and shall perform the duties of the General Manager and has and may exercise the powers and duties of the General Manager.

(6) The General Manager and the Deputy General Manager –

- (a) shall devote the whole of their services to the rank; and
- (b) shall not be engaged in or hold any other said office or employment.

Vacation of office of the General Manager, etc.

24. The appointment of the General Manager or Deputy General Manager shall be terminated by the Board acting in accordance with the advice of the Public Service Commission if –

- (a) he becomes permanently incapable of performing his duties;
- (b) he engages in any paid employment outside the duties of his office;
- (c) he resigns his office by writing under his hand to the Chairman;
- (d) he becomes bankrupt, applies to take the benefit of any law from the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of his salary for their benefit;
- (e) he is guilty of criminal offence involving fraud or dishonesty;
- (f) he is under a sentence of imprisonment for a term of 6 months or more including a suspended sentence imposed on him by the court; or
- (g) he is in serious breach of any of the terms and conditions of his service under Section 23(2) of this Act.

Staff

25. (1) The Bank may after consultation with the Public Service Commission appoint such officers or employees as are necessary for the purposes of this Act.

(2) Subject to this Act, officers or employees of the Bank subject to good behaviour hold office on such terms and conditions as are determined by the Bank.

(3) The termination of appointment, dismissal and disciplinary control of the staff shall be vested in the Bank acting in accordance with the advice of the Public Service Commission.

Temporary and casual employees

26. The Bank may appoint such temporary and casual employees as are necessary for the purposes of this Act for a period not exceeding 2 months and on such terms and conditions as the Bank determines.

Loans to an officer or employee of the Bank

27. (1) Subject to this section, the Bank shall not lend money or guarantee a loan to an officer or employee.

(2) The Bank may lend money or guarantee a loan to an officer or employee –

(a) for the purchase, erection, alteration, renovation or enlargement of a house which he owns, or intends to own; or

(b) to discharge a mortgage charge or encumbrance on such a house.

(3) In addition to and not in derogation of the powers conferred by subsection (2), but subject to subsection (4) of this Act, where the General Manager is satisfied that special circumstances as may be determined by the Board in accordance with a resolution in writing signed by the members at a meeting of the Board exist the Bank may make a loan or loans to an officer or employee of the Bank on such terms and conditions as the Board thinks proper.

(4) The total amount of any loans or loans under subsection (3) of this Act outstanding to an officer or employee of the Bank shall not exceed \$2000.

PART V FINANCIAL MATTERS

Share capital, increase and reduction, allotment and transfer and liability of shareholder

28. (1) The authorised share capital of the Bank shall be \$2,500,000 divided into 2,500,000 of \$1 each.

(2) The Bank may subject to the written approval of the Minister by resolution of the Board increase the share capital of the Bank.

(3) On the coming into operation of this Act, \$1,500,000 of the share capital of the Bank shall be deemed to have been allotted, issued to and fully paid up at par value by the Government.

(4) The Government may in addition to any of the shares referred to under subsection 3 of this section subject to the approval of the Cabinet subscribe for or otherwise acquire other shares in the Bank as may have not been allotted and issued to any person.

(5) Subject to subsection (7) of this section and subject to the approval of the Cabinet the Bank may offer any shares not subscribed for or otherwise acquired by the Government to any person at such price and on such terms and condition as the Board determines.

(6) Subject to subsection (7) of this section no transfer or assignment of any share right or interest whatsoever in any share shall have effect unless such transfer or assignment is approved by the Board acting in accordance with the advice of the Minister.

(7) Notwithstanding anything contained in this section, the Government shall at all times hold not less than 51 per cent of the issued share capital of the Bank.

(8) All moneys required to be paid by the Government in respect of the subscription for or acquisition of the shares in the Bank shall be paid out of moneys appropriated from the Consolidated Fund by the Maneaba ni Maungatabu for the purpose or out of any other moneys that may lawfully be used for the purpose.

(9) The liability of a shareholder in the share capital of the Bank shall be limited to the amount (if any) unpaid on the share held by that shareholder.

(10) The capital, funds and resources of the Bank shall consist of –

- (a) all funds and resources of the Loans Board immediately prior to the appointed date;
- (b) such sums as are received by or falling due to the Bank in respect of the repayment of any loan made by the Bank or the interest payable in respect of any such loan;
- (c) such sums as are advanced or granted to the Bank out of moneys appropriated by an Act for the purpose;
- (d) such sums as are earned or arising from any property or investment acquired by or vested in the Bank;
- (e) any property, mortgages, debentures or investments acquired by or vested in the Bank;
- (f) such sums as are borrowed by the Bank on overdraft from another Bank or otherwise for the purpose of meeting any of its obligations in discharging its functions;
- (g) such sums as are raised from the issue of bonds and debentures;
- (h) such sums as are transferred from the Development Bank of Kiribati Reserve Fund under section 29 of this Act; and
- (i) such other sums or property which may be in any manner become payable to or vested in the Bank in respect of any matter incidental to its powers and functions under this Act.

Revenue Fund

29. (1) The Bank shall have a reserve fund, to be called the Development Bank of Kiribati Reserve Fund consisting of such sums as are paid to the credit of such Fund under section 30 of this Act.

(2) There may be transferred from time to time from such Fund to the capital of the Bank such sums as the Board determines.

Calling with profits

30. (1) The net profits of the Bank in each year shall be first applied against any previous losses carried forward and the balance shall be placed to the credit of the Development Bank of Kiribati Reserve Fund.

(2) The Bank may provide for the payment from its not profits in each year of a dividend of such amount as the Board thinks fit and the balance shall be paid to the credit of the Development Bank of Kiribati Reserve Fund.

Bank to raise loans

31. (1) The Bank may from time to time, in such manner and upon such terms and conditions as the Minister may approve raise loans for the purpose of carrying out its functions under this Act.

(2) The Bank may borrow by way of overdraft, on temporary loan up to such limit as the Minister may specify in writing, any sum meeting its commitments.

(3) The Bank may raise loans and borrow moneys in any currency.

(4) The repayment of any loans raised or moneys borrowed under this section or any interest thereon, may be secured by mortgage, debenture or other charge upon the assets of the Bank.

(5) Subject to any law relating to the giving of guarantee by the Government to any loans raised or moneys borrowed by any person the payment of any loan raised or money borrowed including the interest thereon and other charges relating to such loan may be guaranteed by the Government.

Bank's account

32. (1) The Bank shall open and maintain such account or accounts with a bank within or outside Kiribati as it considers necessary for the performance of its functions under this Act.

(2) Moneys received by the Bank shall be paid into the accounts maintained by the Bank.

(3) Cheques and orders for the payment of any sum of money from an account maintained by the Bank pursuant to this section –

(a) shall, where the sum involved exceeds five thousand dollars, be signed by the General Manager and countersigned by another member of the Board; and

(b) may, in any other case be signed by the General Manager or an officer of the Bank authorised in that behalf by the Board.

Estimates of annual income and expenditure

33. (1) The Bank shall not later than 2 months after the coming into operation of this Act and not later than 2 months before the commencement of each financial year, prepare estimates of income and expenditure of the Bank in respect of that year.

(2) A copy of the estimates for each financial year referred to in subsection (1) of this section shall, as soon as practicable, be sent to the Minister.

Accounts and audit

34. (1) In this section "prescribed persons" means the General Manager, the Deputy General Manager, other member or an officer or employee of the Bank.

(2) The Bank shall at all times keep full and proper accounts and other records of its operations and transactions and as soon as reasonably practicable after the end of each financial year shall in accordance with generally accepted accounting principles prepare a statement of accounts consisting of a balance sheet, profit and loss statement and a statement of the source and application of the funds of the Bank and such other statements of accounts as are desirable to show fully the financial results of its operations during that year.

(3) A statement of accounts of the Bank referred to in subsection (2) of this section as prepared by the Bank in respect of each financial year for the purpose of inspecting and auditing shall be prepared completed and ready for auditing not later than four months after the end of that year.

(4) The Director of Audit shall inspect and audit the accounts of financial transactions and other assets, including trust moneys, or property of the Bank in accordance with –

(a) the provisions of Part VII of the Public Finance (Control and Audit) Ordinance; and

(b) this section of this Act.

(5) The Director of Audit shall promptly draw the attention of the Maneaba ni Maungatabu and the Minister to any irregularity revealed by the inspection and audit that in the opinion of the Director of Audit is of sufficient importance to justify his doing so.

(6) The Director of Audit shall, at least once in each year, report to the Maneaba ni

Maungatabu and the Minister the results of the inspection and audit carried out under subsection (4).

(7) The Director of Audit or a person authorised by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Bank relating directly or indirectly to the receipt or payment of moneys by it, or to the acquisition, receipt, custody or disposal of assets by it.

(8) The Director of Audit or a person authorised by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

(9) The Director of Audit or an officer authorised by him may require a prescribed person to furnish him with such information in his possession or to which he has access as the Director of Audit or authorised officer thinks necessary for the purpose of an inspection and audit under this section, and the prescribed person shall comply with the requirement.

(10) No person shall hinder or obstruct the Director of Audit or a person authorised by him in the exercise and performance of his duties and functions under this section or refuse or fail to furnish information lawfully required of him under subsection (9) and any person who contravenes this section commits an offence and shall be liable on conviction to a fine of \$200 or to imprisonment for a term of 6 months.

(11) In his report on the financial statements prepared under subsection (4) of this section, the Director of Audit –

- (a) shall report whether the statements are in agreement with the accounts and records of the Bank and show fairly the financial operations and the state of affairs of the Bank; and
- (b) shall report on such matters arising out of the statements as the Director of Audit thinks should be made known to Parliament.

(12) The Bank shall, as soon as reasonably practicable after its accounts and statement of accounts have been inspected and audited under subsection (4) of this section furnish to the Minister a copy of the statement of account together with a copy of any report made by the Director of Audit on that statement or on the accounts of the Bank.

Annual Report

35. (1) The Board shall as soon as reasonably practicable after the end of each financial year, prepare an annual report dealing with operations of the Bank during the preceding financial year and shall transmit such report to the Minister.

(2) A copy of such report and the audited statement of accounts of the Bank, together with a copy of the Director of Audit's report on such accounts referred to in section 34(11) of this Act, shall be laid before the Maneaba in Maungatabu by the Minister as soon as practicable after he had received them.

PART VI CONDITIONS OF LOANS

Application for a loan

36. (1) An application for a loan under this Act –

(a) shall be made to the Bank in the prescribed form;

(b) shall contain such particulars as are –

(i) specified in the form referred to in paragraph (a) of this section; and

(ii) verified by way of statutory declaration; or

(iii) attested by two witnesses.

(2) The Bank shall consider each application for a loan on its merits and may subject to section 8 of this Act grant or refuse such application.

Terms and conditions of securities

37. (1) Where the Bank grants a loan under this Act and requires the borrower to provide a security in respect of such loan, such security may be in such form and subject to such terms and conditions as the Bank, in its discretion, thinks proper in addition to or in amplification of the provisions of this Act or of the conditions of the loan.

(2) In addition to any security under this Part the Bank may take such additional security as it thinks proper.

Assignment, transfer etc. of security void

38. No property over which the Bank has a security under this Act may be assigned, transferred, sold, leased, subleased, mortgaged removed from Kiribati in the case of a security which at the time the loan is granted was situated in Kiribati or otherwise dealt with without the written approval of the Bank, and any assignment, transfer, sale, lease, sublease or dealing entered into contrary to this section is void and of no effect.

Interest and principal

39. (1) Interest is payable on a loan at the prescribed rate.

(2) Interest is payable on any arrears of principal or interest under a loan at the prescribed penalty rate.

(3) The Bank may, in its discretion, give special concession to a borrower by postponing the payment to the Bank of any sum due in respect of –

(a) principal advanced and interest accruing or accrued; or

(b) either the principal so advanced or interest so accruing or accrued,

until the business, the enterprise or commercial undertaking of the borrower the subject of the loan has reached what is, in the opinion of the Bank a reasonable degree of productivity at which time the Bank may order that any amount of principal and interest or principal or interest than due and unpaid be added to the capital sum.

Repayments

40. (1) The amount of principal and interest due under a loan under this Act is repayable in such instalments and at such times as the Bank determines.

(2) The date on which the first instalment is payable is as determined by the Bank.

(3) The maximum period for repayment of a loan under this Act, together with interest, is 25 years from the date of the grant of the loan.

(4) If, on a day on which repayment of an instalment of principal and interest is due, a borrower pays to the Bank an amount less than the total amount due, the Bank shall apply the amount so paid firstly to the interest and the balance (if any) to the principal due.

(5) Where an instalment of principal or interest is not paid within 30 days of the date on which repayment is due, the Bank may take any action that it thinks desirable to recover the instalment, and may –

- (a) recover the cost of doing so as a debt; or
- (b) add the cost to the principal sum due under the loan.

(6) Notwithstanding the provisions of this Part or of the loan, or of any security under this Act, where –

(a) the borrower contravenes or fails to comply with –

(i) this Part;

(ii) the terms and conditions of a loan or of any security;

(iii) a requirement authorised by this Part; or

(b) an instalment of principal or interest is in arrears;

(c) a borrower becomes bankrupt or insolvent;

(d) in the opinion of the Bank a loan has been obtained by means of, or partly by means of, a statement that is false or misleading; or

(e) in the opinion of the Bank a loan has not been or is not being applied for the purpose for which it was granted or it has not been or is not being carefully or economically expended, the Bank may order that –

- (i) the whole or part of the amount of the debt be repayable immediately; or
- (ii) the loan whether secured by way of mortgage or otherwise be enforced or realized accordingly.

(7) In addition to any of the powers of the Bank under subsection 6(a) of this section, relating to the enforcement or realisation of security for a loan the Bank –

- (a) may take over the management of the business, enterprise or commercial undertaking of the borrower; and
- (b) shall have the right and all the powers necessary to sell and realise or buy the property, mortgaged or otherwise as a security for the loan.

(8) The proceedings provided for under subsection (6) and (7) of this section are in addition to any other proceeding which may be taken by the Bank.

(9) The Bank may accept, on such terms and conditions as are prescribed, payment of the whole or part of the principal and interest of a loan before the time when payment is due.

Insurance

41. (1) A borrower shall insure and keep insured, for its full insurable value, and with an insurer approved by the Bank, all property the subject of a security or that has been obtained under or by virtue of a loan, against loss or damage by fire or any other risk that the Bank requires to be insured against.

(2) If a borrower fails to comply with subsection (1) of this section, the Bank may insure the property in accordance with that subsection, and may –

- (a) recover the cost of doing so from the borrower as a debt; or
- (b) add the cost to the principal sum due under the loan.

Maintenance of property

42. (1) A borrower shall maintain in good order and conditions all property the subject of a security under this Act or that has been obtained under or by virtue of a loan, and shall carry out any requirement in that regard of the Bank or of a person authorised for the purpose by the Bank.

(2) If any property referred to in subsection (1) suffers loss or damage, the borrower shall promptly notify the Bank and make it good, to the satisfaction of the Bank, and shall carry out any requirement in that regard of the Bank or of a person authorised for the purpose by the Bank.

(3) If a borrower fails to comply with this section, the Bank may take or cause to be taken

such action as, in its discretion, it thinks desirable to maintain the property in, or to restore the property to, good order and condition or to make good the loss or damage, and may –

- (a) recover the cost of doing so from the borrower as a debt; or
- (b) add the cost to the principal sum due under the loan.

Examination as to application of loan

43. (1) The Bank may make cause to be made such examination as it thinks desirable to ensure that a loan under this Act is being applied to the purposes for which it was made.

(2) The Bank may authorise, in writing, a person to make an examination under subsection (1) of this section, and the borrower shall produce to any person so authorised all the relevant books and documents and other matters and things necessary for the purposes of the examination, and shall furnish all relevant information required by the authorised person.

(3) A person authorised by the Bank under this section may –

- (a) at all reasonable times, enter on any land or premises in respect of which a loan under this Act has been made; and
- (b) examine the land or premises and any matter or thing on the land or premises.

Write off

44. (1) Subject to subsection (2) of this section the Bank may write off any amount owing under this Act that the Board reasonably thinks irrecoverable.

(2) Subsection (1) of this section shall not apply to any amount exceeding \$10,000 unless such write off is so approved by the Minister.

Offence to misapply loan

45. Any person who knowingly misapplies the whole or part of any loan, advance or investment made to him by the Bank under this Act commits an offence and shall on conviction be liable to a fine of \$1000 or to imprisonment for a term of two years.

Offence to dispose property used as security

46. Any person who contravenes section 41(2) of this Act or removes out of Kiribati or disposes of any property forming the whole or part of a security pledged, mortgaged, charged or assigned to the Bank, other than with the authority of the Bank, commits an offence and shall, on conviction be liable to a fine of \$1000 or to imprisonment for a term of two years.

Offence to obtain loan by false statement

47. Any person who wilfully fails to disclose any material information within his knowledge, or who wilfully makes any statement which he knows to be false or does not believe to be true for the purpose of obtaining a loan under this Act, commits an offence and shall be liable on conviction to a fine of \$1000 or to imprisonment for a term of two years.

Obstruction

48. A person who directly or indirectly hinders or obstructs a person in the exercise of his powers or performance of his duties under this Act commits an offence and shall be liable on conviction to a fine of \$200 or to imprisonment for a term of 6 months.

Recovery of debts due to the Bank

49. (1) The Bank may take any action or bring any proceedings to effect recovery of any sum due and payable to the Bank in respect of any loan made under this Act.

(2) The provisions of the Limitation Act 1939 of England shall not apply to any proceedings for the recovery of any loan or part thereof repayable to the Bank and a debt payable to the Bank shall be entitled to the same priority in any proceedings in bankruptcy or insolvency as a debt in respect of tax payable to the Republic.

PART VII MISCELLANEOUS

Secrecy

50. (1) No person who is or has been a member of the Board or officer or employee of the Bank or authorised under section 43(2) of this Act, shall, either directly or indirectly, except in the performance of a duty under or in connection with this Act –

- (a) make a record of;
- (b) divulge; or
- (c) communicate to any person,

any information concerning the affairs of any person acquired by him by reason of his office or employment or authority given under or for the purposes of this Act.

(2) Any person who contravenes this section commits an offence and is liable on conviction to a fine of \$1000 or to imprisonment for a term of 2 years.

Liability of members and employees

51. No member of the Board or officer or employee of the Bank shall be personally liable for any act done or omitted to be done in good faith in the exercise or performance of the functions, powers and duties of the Bank or of any committee of the Bank.

Head office

52. The head office of the Bank shall be at such place in Kiribati as the Board from time to time decides.

Attorney

53. The Bank may, by instrument under its seal, appoint a person (whether within or outside Kiribati) to be its attorney and, subject to the instrument, a person so appointed may do any act or exercise or perform any power of function that he is authorised by the instrument to do, exercise or perform.

Offices, agents, agency functions, etc.

54. In the exercise of its powers and the performance of its functions, the Bank may –
(a) establish offices, branches and agencies at such place within Kiribati as it thinks necessary;
(b) arrange with a person to act as agent of the Bank in any place within or outside Kiribati; and
(c) act as the agent of a bank carrying on business within or outside Kiribati.

Taxation

55. The Bank is not liable to income tax, customs duty or any other taxation or duty under any law.

Periodical returns

56. The Bank shall furnish to the Minister such periodical statements as are prescribed.

Power to improve property and carry on business

57. Where the Bank hold any property or business as security for a loan, and the property or business falls into the hands of the Bank, the Bank may maintain, repair or improve the property, or carry on the business, until the Bank, in its discretion, can dispose of the property or business in the best interests of the Bank.

Execution of contracts

58. (1) Subject to this section, contracts on behalf of the Bank shall be made, varied or discharged in writing in accordance with this section, and any contract so made is effectual in law, and is binding on the Bank and on all other parties to the contract, and their heirs, successors, assigns, executors and administrators.

(2) A contract that, if made between private persons, would by law be required to be in writing under seal may be made, varied or discharged in the name and on behalf of the Bank in writing under the seal of the Bank.

(3) A contract that, if made between private persons, would by law be required to be in writing and signed by the parties to be charged with it may be made, varied or discharged in the name and on behalf of the Bank in writing signed by a person acting with the express or implied authority of the Bank.

(4) A contract that, if made between private persons, would by law be valid although made by parole only may be made, varied or discharged by parole in the name and on behalf of the Bank by a person acting with the express or implied authority of the Bank.

(5) This section does not invalidate a contract executed on behalf of the Bank by a duly appointed attorney of the Bank if the contract would be valid if executed by the attorney on his own behalf.

(6) No person shall affix the common seal of the Bank to any document except in accordance with the resolution of the Board and the execution of any documents so sealed shall be attested by 2 members of the Board.

Investment of trust moneys

59. A trustee, executor or administrator may invest trust moneys in his hand on deposit with the Bank.

Service upon Bank

60. Service upon the Bank of any notice, order or other document shall be effected by delivering the same or by sending it by registered post to the General Manager of the Bank.

Service by Bank

61. Any notice, order or other document required to be served by the Bank under this Act may be served –

(a) personally; or

- (b) by delivering it at or on the premises in which the person to be served resides or carried on business, and by leaving the same with any person apparently above the age of eighteen years resident or employed at such premises; or
- (c) by posting it by pre-paid letter addressed to the last known place of abode or business of the person to be served; or
- (d) by affixing it on any conspicuous part of any land, building or premises the subject of such notice, order or other document; or
- (e) in any case where the person to be served is, or after inquiry appears to be, absent from Kiribati, by service upon the agent of the person to be served; or
- (f) in any case where the address or place of abode or business of the person to be served is not known to the newspaper published and circulating in Kiribati.

Regulations

62. The Minister, acting in accordance with the advice of the Cabinet may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this act or for the conduct of business by the Bank and in particular without prejudice to the generality of the foregoing, with respect to all or any of the following –
- (a) the form and manner in which the application for a loan, guarantee or other assistance are to be made;
 - (b) the fees (if any) to be paid for or in connection with any such application or other matters;
 - (c) subject to section 32 of this Act, the form and manner in which the receipt of any money by or from the Bank is to be acknowledged;
 - (d) subject to section 32 and section 58 of this Act the custody and use of the common seal of the Bank, and the manner in which documents, cheques and instruments of any description are to be signed, executed or received;
 - (e) the Bank's interest rate structure and penalty rate on any arrears of principal or interest under the loan;
 - (f) the total amount of the loan commitment of the Bank in any one or more financial years, whether generally or in respect of any class of loans as determined by the nature of the activity for which a loan is applied for;
 - (g) the conditions under which the Bank may act as an agent for any body or organisation in or outside Kiribati; and
 - (h) generally, any fee, rate, matter or thing which is required or desirable to be prescribed under or in connection with this Act.

Repeal

63. The National Loans Board Ordinance Cap. 59 is hereby repealed.

Companies Ordinance does not apply

64. The provisions of the Companies Ordinance (Cap. 10A) shall not apply to the Bank.
-

SCHEDULE I
(Section 5)

Dissolution of the Loans Board

1. On the appointed date the Loans Board shall be dissolved as a corporate body.

Transfer of assets and liabilities

2. All assets and liabilities including land and other property of the Loans Board immediately prior to the appointed date shall on such date be transferred to and vest in the Bank without any further assurance and the Bank shall have all the powers necessary to take possession of, recover and deal with such assets and discharge such liabilities.

Interest or shareholding in companies, etc

3. Any interest, right shareholding or entitlement of any kind and liabilities and obligations of the Loans Board in any public body or body or persons whether corporate or unincorporate, immediately prior to the appointed date shall on such date to transferred to and vest in the Bank without further assurance and the Bank shall have all the powers necessary to exercise enforce or deal with such interest, right shareholding or entitlement as the Bank sees fit and to discharge such liabilities and obligations.

Transfer and vesting not to be invalid

4. A transfer or vesting effected pursuant to this Act shall –
 - (a) not operate as a breach of any covenant or condition against alienation;
 - (b) not give rise to any forfeiture;
 - (c) not invalidate or discharge any contract or security;
 - (d) operate notwithstanding any caveat, caution, inhibition, or restriction made or entered under any written law relating to dealing with land.

Moveable property books and documents etc., to be delivered

5. The Loans Board shall on the appointed date deliver to the Bank, or as the Bank may order, all moveable property vested in the Loans Board immediately prior to the appointed date, and all books papers, documents minutes receipts and ledgers appertaining to the Loans Board and to its operations.

Agreement, deed etc. to be binding

6. Every agreement, whether in writing or not, and every deed, bond, or other instruments or

undertaking to which the Loans Board was a party or affected the Loans Board immediately prior to the appointed date, shall on or after such date, to the extent that they were previously binding on and enforceable against the Loans Board be binding on and of full force and effect in every respect in favour of or against the Bank as fully and effectively as if, instead of the Loans Board, the Bank had been a party to them or bound by them or entitled to the benefit thereunder.

Action, etc., not to abate

7. Where on the appointed date any action, arbitration or proceeding is pending or existing by, against or in favour of the Loans Board, it shall not abate nor be discontinued or in any way affected by any provision of this Act but shall be prosecuted, continued and enforced by, against or in favour of the Bank as if it had been the original party.

Document, etc., to remain evidence

8. Any book, document or other record which if this Act had not been enacted, would have been evidence in respect of any matter for or against the Loans Board shall, on and after the appointed date in respect of the Loans Board, be admitted in evidence in respect of the same matter for or against the Bank as though for the purposes of the matter in question, the Bank were the Loans Board.

Reference to Board in Act, etc.

9. Where any enactment other than this Act or any document whenever made or executed, contains a reference express or implied to the Loans Board, that reference shall, on and after the appointed date and except where the context otherwise requires, be read, construed and have effect as a reference to the Bank.

Registration of transfer of property

10. Where any property is transferred to the Bank pursuant to this Act, in respect of the transfer of which any law provides for registration, the proper officer of the appropriate registration authority shall upon written request made by or on behalf of the Bank –

- (a) make such entries in the appropriate register as are required by law to give effect to such transfer; and
- (b) where appropriate, issue to the Corporation a certificate of title in respect of such property; or
- (c) make any consequential endorsements on the deeds relating to the title, right or obligation concerned.

Officers or employees

11. All officers or employees of the Loans Board immediately prior to the appointed date, shall on such date become the officers or employees of the Bank on the like terms and conditions of employment as may be applicable to them immediately prior to the appointed date unless varied by the Board after such date or replaced by other terms and conditions as the Board may determine.

SCHEDULE II
(Section 15)

OATH AND AFFIRMATION OF OFFICERS

Oath

I, , do swear that I shall give good and faithful service as a member of the Development Bank of Kiribati Board.

So help me God.

Affirmation

I, , do solemnly and sincerely affirm and declare that I shall give good and faithful service as a member of the Development Bank of Kiribati Board.

DECLARATION OF SECRECY

I, , a member of the Development Bank of Kiribati Board do solemnly and sincerely declare that I shall at all times maintain secrecy in relation to the affairs of the Board and the Development Bank of Kiribati and in particular that I shall not directly or indirectly communicate or divulge any information that comes to my knowledge in the performance of my functions as a member of the Board, except by authority of the Board or under compulsion or obligation of law.

(Signature of Declarant)
Declared , 19.....

Before me:
(Signature of person before whom declaration is made)

DEVELOPMENT BANK OF KIRIBATI ACT 1986
EXPLANATORY MEMORANDUM

1. This Act repeals the National Loans Board Ordinance (Cap. 59) thereby abolishing the

National Loans Board and establishes in its place the Development Bank of Kiribati. The Act will come into operation on a day to be appointed.

2. Section 5 and Schedule 1 deal with the dissolution of the National Loans Board, and the transfer to the Bank of the Loans Board's assets and liabilities. The officers and employees of the Loans Board become such of the Bank.
3. Section 6 sets out the functions of the Bank in the grant of loans and the provision of advice and assistance. Section 11(1) sets out the principles to be applied in determining whether or not any loan or other assistance shall be given.
4. Loans or assistance cannot be given, under Section 11(2), except for business purposes.
5. Part III provides for a Board of Directors who shall govern the Bank. Section 13 makes provision for the Board to include members who are not employed in the public service. Other sections make provision for officers of the Board, meetings, and various procedural matters.
6. Part IV establishes the posts of a General Manager and Deputy General Manager, and deals with staff, and with loans to Bank employees.
7. Part V deals with financial matters.
8. Part VI deals with the making of, terms of, and enforcement of loans. Under Section 36 an application for a loan must be made in a prescribed form before it is considered by the Bank. Interest on loans is under Section 39 to be prescribed. The Bank may in its discretion under section 39(3) accept late payments of principal and interest in appropriate cases. Any security offered must under section 41 be insured, and under section 42 be properly maintained. Various offences in connection with the obtaining of loans, security, and misapplication of loans are established.
9. Part VII contains various provisions dealing primarily with legal and procedural matters. Under section 62 the Minister, acting in accordance with the advice of Cabinet may make Regulations and these shall deal with matters to be prescribed (e.g. form of application, fees, interest rate structure, etc.), and generally.

Michael N. Takabwe
The Attorney General