

Kiribati Ports Authority Act 1990

REPUBLIC OF KIRIBATI

KIRIBATI PORTS AUTHORITY ACT 1990

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THE REPUBLIC OF KIRIBATI
(No. 13 of 1990)

I assent

I. Tabai
Beretitenti
1990

**AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A KIRIBATI PORTS
AUTHORITY AND FOR CONNECTED PURPOSES**

Commencement:
1990

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 Kiribati Ports Authority Act 1990.

Interpretation

2. In this Act unless the context otherwise requires -

"approaches to a port" means any area or navigable channel adjacent to a port so declared under section 3;

"Authority" means the Kiribati Ports Authority established by or under section 4;

"Chairman" means the Chairman of the Authority appointed under section 4;

"Corporation" means the Kiribati Shipping Corporation established by or under the Shipping Corporation Ordinance, Cap. 94A;

"dock" includes a drydock and the entrance thereto, graving dock, gridiron, ship, keelblock, inclined plane, and all machinery, works, fixtures and things whatsoever attached per pertaining thereto;

"dues" means dockage dues, port dues or wharfage dues levied under sections 17, 18 and 19;

"financial year" means the period between the 1st January and 31st December in any year;

"goods" includes animals, carcasses, baggage and other movable or personal property of any kind whatsoever;

"member" means a member of the Authority appointed under section 4;

"owner", when used in relation to goods, includes any person being or holding himself out to be the owner, importer, exporter, consignor, consignee, shipper, agent or person possessed of or beneficially or potentially interested in, or having any control of or power of disposition over, the goods; and, when used in relation to a vessel, includes every person acting as agent of the owner thereof, or such agent to receive freight or other charges payable in respect of the vessel and any part-owner, charterer, operator, consignee or mortgagee in possession thereof or any duly authorised agent of any such person;

"port" means a port, harbour, haven, roadstead, or channel where a vessel can ship or unship passengers and goods;

"port craft" means a vessel plying solely within port limits;

"Port Master" means the Port Master appointed under section 28 and includes any Deputy Port Master appointed under that section;

"rates" means any rates levied by the Authority under section 20;

"vessel" means a ship, boat or other description of vessel used for any purpose on the sea or in navigation and includes a floating rig or platform used in any form of operations at sea;

"warehouse" includes any warehouse or other building belonging to or under the control of the Authority in which goods may be lawfully placed;

"wharf" includes a quay, pier, jetty, landing place or other similar place in or on or from which passengers or goods may be taken on board of or landed from a vessel.

Declaration of ports

3. (1) The Minister may, after consultation with the Authority, by notice declare -

(a) any place in Kiribati or any place and any navigable channel leading into such place in Kiribati to be a port; or

(b) any waters in or of Kiribati and any land contiguous to such waters to be a port for the purposes of this Act.

(2) A notice under subsection (1) shall define the limits of the port both by sea and by land.

PART II ESTABLISHMENT AND MEMBERSHIP OF THE AUTHORITY

Establishment of the Authority

4. (1) There is hereby established a Kiribati Ports Authority.

(2) The Authority –

(a) is a corporation;

(b) has perpetual succession;

(c) shall have a seal;

(d) may acquire, hold and dispose of property; and

(e) is capable of suing and being sued in its corporate name.

(3) The provisions of Schedule 1 shall have effect as to the composition of the Authority and otherwise in relation thereto.

(4) The provisions of Schedule 2 shall have effect as to the officers and employees of the Authority and otherwise in relation thereto.

(5) The Beretitenti, acting in accordance with the advice of the Cabinet, may by order amend any or all of the provisions of Schedule 1 or Schedule 2.

Vesting of assets and liabilities

5. (1) Upon the date of coming into operation of this Act, all lands, buildings, equipment and all other forms of property, whether real or personal, and all interests therein, of whatever nature, belonging to or vested in the Corporation and used by the Corporation exclusively for the purposes of providing port services and other services related to or incidental to port services, shall be deemed to have been transferred to, and become vested in, the Authority.

(2) Notwithstanding any of the provisions of this Act, except with the prior written permission of the Minister, the Authority shall not dispose of by way of sale, lease, sub-lease, mortgage, easement or otherwise, any land or interest in any land vested in the Authority.

(3) The benefits and burdens of any contract for or in connection with the provision of port services or anything incidental thereto or connected therewith to which the Corporation was a party (including the rights to recover and receive all moneys due and payable to the Corporation in respect of such port services) and which subsist on the date of coming into operation of this Act shall, on that date, be deemed to have been transferred from the Corporation to the Authority.

(4) With effect from the date this Act comes into operation every agreement with respect to or related to or connected in any way whatsoever with any port services other than a contract referred to in subsection (3) whether that agreement is in writing or not, and every deed, bond or other instrument with respect to any port services or related to or connected with any port services to which agreement, deed, bond or other instrument the Corporation is a party or which affected the Corporation, and whether or not of such a nature that the rights, liabilities and obligations thereunder can be assigned, shall be deemed to have effect as if the Authority were a party thereto or affected thereby instead of the Corporation and as if for every reference (however worded and whether express or implied) therein to the Corporation there

were substituted in respect of anything to be done on or after such date a reference to the Authority.

PART III FUNCTIONS AND POWERS OF AUTHORITY

Policy directions by Minister

6. (1) The Authority shall give effect to any direction given to it by the Minister on any matter of policy relating to the exercise or performance of its functions, duties or powers.

(2) Where the Authority certifies that it is of the opinion that it will not be possible to recover from consumers or customers concerned the costs incurred by the Authority to give effect to a direction given by the Minister under subsection (1) or that to give effect to such a direction will be impractical, uneconomic or otherwise result in financial loss to the Authority, the Authority shall not give effect to such direction until the Authority is satisfied that provision has been made for the loss up to the maximum estimated by the Authority to be borne by the Republic.

(3) The Authority shall furnish the Minister with such returns, accounts and other information as he may require with respect to the property or activities of the Authority and shall afford to him facilities for verifying such information in such manner and at such times as he may reasonably require.

Functions of Authority

7. The functions of the Authority are as follows –

- (a) to provide and maintain adequate and efficient port services and facilities in ports or the approaches to ports;
- (b) to regulate and control navigation within ports and the approaches to ports;
- (c) to promote the use, improvement and development of ports;
- (d) to co-ordinate all activities of, or within, ports;
- (e) to acquire such land and execute such works or do such acts and things as may be necessary in respect of the functions of the Authority under the provisions of this Act or of any other written law;
- (f) subject to the provisions of this Act, to do all things necessary or convenient to be done in connection with or incidental to the performance of its functions under this Act or any other written law.

Powers of Authority

8. (1) Subject to the provisions of this Act, and in addition to any other powers conferred upon it by this Act or by any other written law, the Authority shall have the power -

- (a) to appoint and employ such persons as it may consider necessary for the efficient performance of its functions;

- (b) to enter into any contract, covenant, bond or agreement of any kind whatsoever for the purposes of this Act;
- (c) to authorise any person to carry out any work or perform any act in furtherance of its functions and powers;
- (d) to carry on the business of carriers of passengers or goods by land or sea, stevedores, wharfingers, warehousemen, lightermen, dealers in oil or other kinds of fuel, dealers in stores connected with or required in any of the above- mentioned businesses whether carried on by the Authority or not, and to carry on any other business or activity whatsoever which appears to the Authority to be necessary or advantageous for the discharge of its functions;
- (e) to acquire, hire, procure, construct, erect, manufacture, provide, operate, maintain or repair anything whatsoever required by the Authority for the purposes of this Act;
- (f) to provides services within a port or the approaches to a port -
 - (i) in berthing, towing, mooring, moving slipping or docking any vessel;
 - (ii) in loading or discharging goods or embarking or disembarking passengers in or from any vessel, including the provision of landing-places;
 - (iii) in providing stevedores and other labour and equipment at wharves and anchorages;
 - (iv) in sorting, weighing, measuring, storing, warehousing or otherwise handling any goods;
 - (v) in providing lighterage;
 - (vi) in piloting any vessel;
 - (vii) in supplying fuel, water or telephone services to vessels; or
 - (viii) for rendering assistance to any vessel or recovering property lost, sunk or stranded;
- (g) to appoint, license and regulate weighers and measurers of goods within a port;
- (h) to acquire any undertaking affording or intending to afford facilities for the loading and discharging or warehousing of goods in a port or for the bunkering of vessels;
- (i) to provide such fire and security services, both within a port and elsewhere, as may be deemed necessary by the Authority for the purpose of extinguishing fires and of preserving life and property;
- (j) to control the erection and use of wharves, docks and any other works, whether above or below the high water mark, within a port or the approaches to a port;
- (k) to reclaim, excavate, enclose or raise any part of any land vested in the Authority;
- (l) to do anything for the purposes of –
 - (i) improving the skill of the employees of the Authority; or
 - (ii) improving the efficiency of the equipment of the Authority and the manner in which such equipment is operated;
- (m) to provide accommodation and recreational facilities for employees of the Authority and generally to promote their welfare;
- (n) to make to or guarantee loans for employees of the Authority for such purposes as the Authority may approve.

(2) The powers conferred by subsection (1) shall be in addition to and not in derogation from any other powers conferred upon the Authority by this Act or any other written law.

Compulsory acquisition of land

9. (1) Where the Authority is unable to acquire any land by agreement for any purpose for which it is authorised by this Act or by any other written law to acquire land, the Minister may acquire such land for the Authority under the State Acquisition of Lands Ordinance (Cap. 95B).

(2) Any land acquired in accordance with subsection (1) shall be deemed to be land acquired for a public purpose for the purposes of the State Acquisition of Lands Ordinance (Cap. 95B).

PART IV FINANCES OF THE AUTHORITY

Funds of the Authority

10. (1) The funds of the Authority shall consist of such sums as may from time to time be appropriated to it from the Consolidated Fund by way of loan, grant or subsidy and such other moneys as may lawfully be paid to or raised or borrowed by the Authority.

(2) It shall be the duty of the Authority so to exercise its powers and perform its functions under this Act as to secure that at the earliest possible date its total revenues are sufficient, taking one year with another to meet its total outgoings properly chargeable to revenue account including depreciation and interest on capital.

Borrowing powers

11. (1) The Authority may, with the consent of the Minister given after consultation with the Minister responsible for Finance and Economic Planning and upon such terms and conditions as the Minister may approve, raise loans, either by charge or mortgage or by the creation and issue of debentures, debenture stock, bonds or otherwise, for the purpose of carrying out its functions under the provisions of this Act or of any other written law or provide necessary working capital.

(2) The repayment of moneys borrowed or loans raised under the provisions of this section and the payment of interest thereon may be guaranteed by the Government.

Application of revenue

12. (1) The revenue of the Authority for any financial year shall be applied in defraying the following charges -

- (a) the allowances of the members of the Authority;
- (b) the salaries, fees and remuneration of the officers, agents and employees, and technical and other advisers of the Authority;
- (c) working expenses, and expenditures on, or provision for, the maintenance of the property and of any of the works of the Authority, and the insurance of the same and the discharge of the functions of the Authority properly chargeable to revenue account;
- (d) interest on any debenture or debenture stock or other security issued, or on any loan raised by the Board;
- (e) sums required to be transferred to a sinking fund or otherwise set aside for the purpose of making provision for the redemption of debentures or debenture stock or other security or the repayment of other borrowed money;
- (f) such sums as it may be deemed appropriate to set aside in respect of depreciation on the property of the Authority; or
- (g) any other expenditures authorised by the Authority and properly chargeable to revenue account.

(2) The balance of the revenue of the Authority shall be applied to the creation of reserve funds to be utilised as the Authority may determine subject to the approval of the Minister.

Powers of investment

13. The Authority may invest any of its moneys not immediately required to be expended in meeting its obligations or discharging its functions in any security authorised by any written law for the time being in force for the investment of trust funds.

Estimates

14. (1) The Authority shall in every year cause to be prepared and shall adopt annual estimates of its income and expenditure for the ensuing year.

(2) Supplementary estimates may be adopted by the Authority at any time.

(3) The Authority shall transmit to the Minister for approval a copy of all annual and supplementary estimates upon their adoption by the Authority. Any variation of such estimates shall be transmitted to the Minister for approval.

Accounts and audit

15. (1) The Authority shall keep proper accounts and other records in respect of its operations and shall, not later than the 31st day of March in each year, cause a statement of accounts to be prepared in respect of the preceding financial year.

(2) The annual statement of accounts of the Authority shall present a true and fair view of the financial position of the Authority and of the results of the operations of the Authority for the year to which it relates.

(3) The accounts of the Authority shall be audited annually by the Director of Audit.

Statement of accounts and annual report

16. (1) As soon as practicable after the end of each financial year, but not later than the 31st May or such later date as the Minister may approve, the Authority shall transmit to the Minister -

- (a) a copy of the statement of accounts;
- (b) a copy of the report made thereon or on the accounts of the Authority by the Director of Audit;
- (c) a report containing details of the activities of the Authority during that year.

(2) The Minister shall cause copies of the accounts and reports to be printed and laid before the Maneaba ni Maungatabu as soon as practicable thereafter.

PART V DUES AND RATES

Dockage dues

17. (1) Dues known as dockage dues shall be levied by and paid to the Authority on every vessel berthed at a wharf.

(2) Dockage dues shall be prescribed by the Authority by notice subject to the approval of the Minister.

(3) The Authority may detain any vessel in a port until any dockage dues have been paid or have been secured to its satisfaction.

Port dues

18. (1) Dues known as port dues shall be levied by and paid to the Authority on every vessel in a port, whether plying for hire or otherwise.

(2) Port dues shall be prescribed by the Authority by notice subject to the approval of the Minister.

Wharfage dues

19. (1) Dues known as Wharfage dues shall be levied by and paid to the Authority in respect of goods landed or discharged within a port (including a wharf not belonging to the Authority or under its control) or the approaches to a port.

(2) Wharfage dues shall be prescribed by the Authority by notice subject to the approval of the Minister.

Rates

20. Subject to the provisions of this Act, the Authority may levy such rates as it shall, with the approval of the Minister and by notice prescribe for the use of any land, works or appliances belonging to it and for services, goods or facilities provided by it in pursuance of its powers under this Act or under any other written law, and, without prejudice to the generality of the foregoing, for any of the following matters -

- (a) the landing, shipping, Wharfage, carnage, storage or carriage of goods and the deposit with it or the placing of goods in its custody or control;
- (b) the provision of pilotage services to any vessel within the territorial waters of Kiribati;
- (c) the use by any vessel, vehicle or person of any land, works or appliances, wharf or dock under its control;
- (d) the use of any gear, tackle, instruments, tools, utensils, staging or materials supplied by it for the purpose of any vessel using or any person working any land, works or appliances under its control;
- (e) the use of any vessel or engine belonging to or maintained by the Authority for the extinction of fire;
- (f) the towing of, and rendering assistance to, any vessel;
- (g) the supply by the Authority of water, telephone services, fuel, electricity and other forms of energy;

- (h) the laying of moorings, cables or pipes;
- (i) the laying, lifting and servicing of buoys not owned by the Authority; or
- (j) the provision of priority berthing arrangements.

Power of entry onto vessels

21. Any duly authorised employee of the Authority may enter onto and inspect any vessel within a port or the approaches to a port in order to ascertain the amount of the dues or rates payable in respect thereof.

Receipts

22. Receipts for dues and rates shall be given to the person paying them, and any vessel in respect of which such receipt is not produced, when demanded by a duly authorised employee of the Authority, may be detained until such receipt is produced or other satisfactory proof of payment has been given.

Lien on goods

23. For the amount of all dues and rates levied under the provisions of this Act in respect of any goods, the Authority shall have a lien on the goods and shall be entitled to seize and detain them until the rates are fully paid or secured to its satisfaction and such lien shall have priority over all other liens and claims except those of the Government.

Powers to sell or dispose of goods

24. (1) Subject to the provisions of this section, if any goods which have been placed in or on premises of the Authority are not removed therefrom within a period of twenty-one days from the time when they were so placed, the Authority may, at the expiration of that period, sell by public auction or dispose of all or any of such goods as it may think fit:

Provided that -

- (a) in the case of goods for which a through bill of lading has been produced there shall be substituted a period of forty-two days for the period of twenty-one days referred to in this subsection;
- (b) if the goods are of a perishable nature the Authority may direct their removal within such shorter period, not being less than twenty-one hours after the discharge thereof, as it may think fit, and if not so removed, the Authority may sell all or any of such goods by public auction or dispose of them as it may think fit.

(2) For the purposes of subsection (1), a sale shall not be rendered invalid by reason only that it takes place in a place or in an area to which the public is not admitted as of right.

(3) Before effecting a sale under this section, the Authority shall give at least three days' notice thereof by advertisement at public places or on the radio, unless the goods are of so perishable a nature as in the opinion of the Authority renders their immediate sale necessary or advisable, in which event the Authority shall give such notice (if any) in whatever manner

it considers the urgency of the case requires.

(4) The proceeds of any sale under this section shall be applied by the Authority in the following order:-

- (a) first, in payment of any duty owing to the Government;
- (b) secondly, in payment of the expenses of the sale;
- (c) thirdly, in payment of all charges and expenses due to the Authority under the provisions of this Act in respect of the goods; and
- (d) fourthly, in payment of freight or other claims or liens of which notice has been given under the provisions of any written law.

(5) The surplus of the proceeds of sale, if any, after making the payments specified in subsection (4), shall be paid to the person entitled thereto on demand, and, in case such demand is not made within one year from the date of the sale of the goods, shall be paid to the account of the Authority whereupon all rights to the same by such person shall be extinguished.

Shipping clearance to be withheld etc.

25. Notwithstanding the provisions of any other written law, if the Authority gives to any public officer whose duty it is to grant clearance of any vessel a written notice stating that an amount therein specified is due in respect of dues or rates levied under this Act in respect of that vessel, he shall, not grant such clearance until the amount due has been paid or has been secured to the satisfaction of the Authority.

Exemption, reduction, etc., of dues, rates, etc.

26. (1) The Authority may -

- (a) exempt any vessel or goods or classes of vessels or goods from the payment of any dues;
- (b) reduce, refund or waive, in whole or in part, any dues, or the rates referred to in sections 17 to 20.

Evasion

27. (1) Any master or owner of any vessel or any owner, consignee or consignor of any goods who, by any means whatsoever, evades or attempts to evade any of the dues or rates leviable under this Act commits an offence and shall be liable on conviction to a fine not exceeding \$1000 or to imprisonment for a term not exceeding twelve months, and shall in addition be liable to pay to the Authority as penalty double the amount of the dues or rates he evaded or attempted to evade.

(2) The tender to, or acceptance by, the Authority or any of its employees of any dues or rates the payment of which has been previously evaded or left unpaid, shall not release or discharge any person from his liability under the provisions of subsection (1).

PART VI
PORTS MASTER AND DANGEROUS GOODS

Ports Master and Deputy Ports Master

28. The Authority shall appoint a Ports Master for the purposes of this Act, and may also appoint such number of Deputy Ports Masters as it may consider necessary for all or any of the purposes of this Act.

Power of Ports Master in relation to vessels

29. (1) Notwithstanding anything contained in this Act, the Ports Master may within a port or the approaches to a port -

- (a) direct where any vessel shall be berthed, moored or anchored and the method of anchoring;
- (b) direct the removal of any vessel from any berth, station or anchorage to another berth, station or anchorage and the time within which such removal is to be effected; or
- (c) regulate the movement of vessels generally.

(2) Any person who, without lawful excuse, refuses or neglects to obey or comply with any direction given under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding \$2000 or to imprisonment for a term not exceeding six months.

(3) In case of any offence committed under the provisions of subsection (2), the Authority may, whether or not any proceedings have been instituted against any person for such offence, do or cause to be done all such acts as are in its opinion reasonable or necessary for the purpose of carrying out such compliance and may hire and employ such persons as it considers necessary for such purpose and all expenses incurred in doing such acts shall be paid and borne by and recoverable from that person.

Fire on board vessel

30. (1) In the event of fire breaking out on board a vessel in a port or the approaches to a port, the Ports Master may proceed on board the vessel with such assistance and persons as he considers necessary, and may give such orders as he considers necessary for scuttling the vessel, or for removing it or any other vessel to such place as he considers proper to prevent in either case danger to other vessels and for the taking of any other measures that he considers expedient for the protection of life or property.

(2) If such orders are not forthwith carried out by the master of such vessel, the Ports Master may himself proceed to carry them into effect.

(3) All expenses incurred in the exercise of the powers of the Ports Master under this section shall be recoverable from the master or owner of the vessel concerned.

Power to board vessel

31. (1) The Ports Master may go on board any vessel within a port or the approaches to a port whenever he suspects that any offence against this Part has been or is about to be committed in any vessel, or whenever he considers it is necessary for him so to do in the discharge of any duty imposed upon him by or under this Act.

(2) Any master of a vessel who, without lawful excuse, refuses to allow the Ports Master to enter that vessel pursuant to his powers under subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding \$1000.

Non- liability

32. The Authority shall not be liable for any official act, omission or default of the Ports Master done, caused or suffered in good faith.

Dangerous goods

33. (1) The Authority shall, with the approval of the Minister, make regulations for the conveyance, loading, discharging and storage of dangerous goods within a port or the approaches to a port and in particular but without prejudice to the generality of the foregoing, for all or any of the following matters:-

- (a) declaring any goods as dangerous goods;
- (b) regulating the navigation and place of berthing of vessels carrying dangerous goods;
- (c) regulating the mode of stowing and keeping dangerous goods on board vessels;
- (d) regulating and controlling the lighthouse, landing, loading and discharging, conveying and storage of dangerous goods;
- (e) prohibiting or subjecting to conditions and restrictions the conveyance of any kind of dangerous goods with any other goods;
- (f) regulating the times at which lights or fires are to be allowed on board vessels carrying dangerous goods; and
- (g) generally, whether by means similar to those above-mentioned or not, for protecting persons and property from danger.

(2) For the purpose of subsection (1), the expression "dangerous goods" includes aquafortis, vitriol, naphtha, benzine, gunpowder, lucifer matches, nitroglycerine, petroleum, any explosives within the meaning of the Explosives Ordinance (Cap. 32) and any other goods which the Authority may declare to be dangerous goods for the purposes of that subsection.

PART VII LIABILITY OF THE AUTHORITY

Loss or damage to goods

34. The Authority shall not be liable for any loss caused to any person as a result of the short delivery of, or damage to, any goods in its custody or under its control, other than goods the nature and value of which have been declared in accordance with the provisions of subsection (1) of section 35, and transshipment goods as defined in subsection (3), of section 35.

Trans-shipment and declared goods

35. (1) The Authority shall only be liable for the loss of, or damage to, any transshipment or other goods if the nature and value of such goods were declared in writing to the Authority before they came into its custody or under its control, in which case the liability of the Authority shall, subject to the provisions of subsection (2), be limited to the sum of \$2000 and shall, in the case of transshipment goods, cease when the goods have been delivered alongside the on-carrying vessel for loading.

(2) The Authority shall not be liable for the loss of, or damage to, any goods to which this section applies arising from -

- (a) fire or flood, unless caused by the negligence of the Authority;
- (b) an act of God;
- (c) an act of war;
- (d) seizure of the goods under any legal process;
- (e) quarantine restrictions;
- (f) any negligence of the owner or carrier of the goods;
- (g) strikes, lockouts or stoppages of labour, from whatever cause whether partial or general;
- (h) riot or civil commotion;
- (i) the saving or the attempt to save life or property;
- (j) insufficient or improper packing of the goods, defective or insufficient marks thereon or leakage from drums, containers or packages containing the same;
- (k) any inherent liability of the goods to wastage in bulk or weight, latent or inherent defect or natural deterioration;
- (l) any deficiency in the contents of unbroken packages of the goods; or
- (m) the dangerous nature of the goods.

(3) For the purposes of this section "trans-shipment goods" means goods landed from a vessel and placed in the custody of the Authority for the purposes of shipment on another vessel on a through bill of lading dated at the port of loading of such goods and showing that the destination is via Kiribati, with the ultimate port of destination marked on each package or unit containing such goods and declared on a transshipment manifest lodged with the Authority prior to, or at the time such goods are placed in its custody.

Limitation of liability

36. (1) Subject to the provisions of this Act, the liability of the Authority for damages, where any loss or damage is caused to any vessel or to any goods thereon, shall not exceed an aggregate amount of \$50,000.

(2) The limitation of liability under this section shall relate to the aggregate of any losses and damages sustained upon any one distinct occasion, even though such losses or damages are sustained by more than one person, and shall apply whether the liability arises at common law or under the provisions of any written law and notwithstanding anything contained in such written law.

Cargo subject to general or particular average

37. (1) The owner or master of any vessel discharging or intending to discharge in a port or in the approaches to a port any cargo which is the subject or likely to be the subject of a declaration of general or particular average shall inform the Authority prior to the commencement of such discharge of the existence or likelihood of such a declaration and of the particulars of the cargo affected or likely to be affected thereby.

(2) The Authority shall not be liable in respect of any loss, damage or destruction during the discharge, reception, storage or removal of any cargo referred to in subsection (1).

Authority not liable for acts of employee

38. (1) Subject to the provisions of this Part, any person employed or engaged by the Authority shall, whilst performing work in or on any vessel, be deemed to be the servant of the owner or master of that vessel and the Authority shall not be liable for any loss or damage, howsoever caused, caused by his act, omission or default to or on that vessel or any other vessel or to any other person or thing whatsoever.

(2) Nothing in subsection (1) shall affect any liability that the Authority may have under any written law relating to workmen's compensation.

Non-application of this Part

39. Nothing in this Part shall apply to any goods accepted by the Authority for storage in a warehouse under its powers contained in paragraph (d) or in sub-paragraph (iv) of paragraph (f) of subsection (1) of section 8 or to any liability of the Authority in respect of any loss of the same or damage thereto.

PART VIII MISCELLANEOUS OFFENCES

False returns

40. Any person who makes, either knowingly or recklessly, any statement which is false in any material particular in any return, claim or other document which is required or authorised to be made by or under the provisions of this Act commits an offence and shall be liable upon conviction to a fine of \$1000.

False information as to draught etc.

41. Any master, owner or agent of a vessel entering or leaving or intending to enter or leave a port or come alongside or depart from a wharf in a port, who gives false information of the draught, length or beam of such vessel to any employee of the Authority authorised to ascertain the same commits an offence and shall be liable upon conviction to a fine not exceeding \$1000.

Wilful damage to port works and property

42. (1) Any person who wilfully removes, breaks, destroys or in any other way damages or injures any port works or any property belonging to the Authority or who hinders or wilfully

prevents such port works or property from being used or operated in the manner in which it is intended to be used or operated commits an offence and shall be liable upon conviction to a fine not exceeding \$2000 or to imprisonment for a term not exceeding 5 years, and in addition shall pay by way of compensation to the Authority, such sum as the court may determine.

(2) For the purposes of subsection (1), "port works" includes generally any works constructed or in course of construction by or under the authority of the Government or of the Authority for the improvement, protection, management or utilization of a port, and in particular without limiting the general import of the term, every basin, graving dock, wharf, light, light-ship, bridge, viaduct, breakwater, embankment, dam, building, or a reclamation of land from the sea or from any navigable river, and any excavation, deepening, dredging or widening of any channel, basin or other part of a port whether, complete or incomplete, in the sea or any bay or arm thereof, and all buildings thereon and machinery used in connection with such port works or any part thereof.

Obstructing Authority in performance of duty

43. Any person who at any time hinders, obstructs, intimidates or molests the Authority or any of its employees, agents or contractors in the performance and execution of its or his duty or of anything which they are respectively empowered or required to do by virtue or in consequence of this Act, or removes any mark set up for the purpose of indicating any level or direction necessary to the execution of works authorised by this Act, commits an offence under this Act and shall be liable upon conviction to a fine not exceeding \$1000 or to imprisonment for a term not exceeding 6 months.

Offences in connection with safety of vessels etc.

44. Any person who in any port or the approaches to a port -

- (a) wilfully and without lawful excuse loosens or removes from its moorings or from its fastenings in or alongside any anchorage, wharf or dock, any vessel without leave or authority from the master or owner of such vessel or person in charge of such anchorage, wharf or dock;
- (b) without the permission of the Port Master or without any lawful excuse discharges any firearm except for the purpose of making a signal of distress or for other purpose as may be allowed under any written law;
- (c) moves, damages or otherwise interferes with any navigation mark;
- (d) graves, breams, smokes any vessel or boils or heats any pitch, tar, resin, turpentine, oil or other such combustible matter on board any vessel at any time or within any limits at or within which such act is prohibited, or contrary to the orders and directions of the Port Master or the master of such vessel; or
- (e) uses a naked light when drawing off spirits, turpentine oil or other inflammable oils or liquids of any kind on board any vessel,

commits an offence and shall be liable upon conviction to a fine not exceeding \$1000 or to imprisonment for a term not exceeding 6 months.

PART IX MISCELLANEOUS PROVISIONS

Master, owner etc. answerable for damage

45. (1) In every case in which any damage is done to any property of the Authority by any vessel or by any person employed thereon, the cost of making good the damage may be recovered by the Authority from the master, owner or person in charge of the vessel.

(2) The Authority may detain any such vessel until the cost of making good the damage has been paid, or security therefor has been given, to the Authority.

Bonded warehouses

46. The provisions of the Customs Ordinance (Cap. 22) or any other legislation relating to customs shall apply to any warehouse of the Authority licensed as a bonded warehouse under the provisions of that Ordinance or other legislation.

Powers of arrest

47. (1) Any employee of the Authority authorised in writing by the Chairman, either generally or in any particular case, may arrest without warrant any person found committing or whom he has reason to believe has committed an offence under this Act.

(2) A person arrested under this section shall forthwith be reported to the police.

Power to compromise

48. The Authority may compound or compromise, for or in respect of any claim or demand made against it, for such sum of money or other compensation as it deems sufficient.

Evidence of identity

49. Any employee of the Authority who reasonably believes that any person has committed an offence against the provisions of this Act may require him to furnish evidence of his identity. Any such person who refuses to furnish such evidence or who wilfully mis-states such information commits an offence and shall be liable upon conviction to a fine not exceeding \$100.

Authorised employee of Authority may prosecute

50. Any authorised employee of the Authority may conduct a prosecution under this Act on behalf of the Authority.

Apparatus, etc. not subject to distress etc.

51. In the event that any apparatus or equipment belonging to the Authority is placed in or upon any place which is not in the possession of the Authority such apparatus or equipment shall not be subject to distress nor be taken in execution under process of any court or in any proceedings in bankruptcy.

Regulations

52. (1) The Minister, acting in accordance with the advice of the Cabinet, may make regulations for the maintenance, control and management of, any port and the approaches thereto and generally for giving effect to and carrying out the purposes of this Act and in particular, and without prejudice to the generality of the foregoing, may make regulations in respect of the following matters:-

- (a) regulating traffic and preventing and providing for the removal of obstructions or impediments to navigation;
- (b) regulating, declaring and defining the wharves and docks on and from which goods shall be discharged from or loaded on or into vessels and the manner in which and the conditions under which such discharging and loading shall be carried out, and for varying the position of vessels discharging or loading;
- (c) regulating the erection or construction of wharves in a port or encroaching in any way on the waters thereof;
- (d) regulating the cleaning and repair of private wharves and keeping the same in a fit state for the convenience and safety of persons walking upon or landing on or embarking from the same;
- (e) keeping free passages of such width as it considers necessary within a port and along or near to the wharves, docks, moorings and other similar works in or adjoining the same and for marking out the spaces so to be kept free;
- (f) regulating the anchoring, fastening, mooring and unmooring and warping of all vessels and the use of warps, mooring buoys, chain and other moorings and the granting of permission, on such conditions as the Authority may think fit for the keeping or placing of anchors or private moorings or buoys;
- (g) regulating the use of anchorages, wharves and docks and the movement of vessels, persons and vehicles and preventing obstruction at anchorages and on wharves and docks and ensuring the safety of the same and any cargo thereon;
- (h) regulating the use by vessels of whistles, sirens and other like instruments and the signals to be used and measures to be taken in case of fire in a port;
- (i) enforcing and regulating the use of navigation lights, signals and signal lights by vessels and the steps to be taken by vessels navigating in the waters of a port for the avoidance of collisions;
- (j) defining any area as a prohibited anchorage, and setting apart any area where any class or classes of vessels only may anchor and restricting the navigation of such area to such vessels, and times it may consider necessary;
- (k) the information to be supplied by the masters, owners and other persons in respect of vessels arriving and departing, and of goods loaded or discharged in a port, and the time and manner in which such information shall be supplied;
- (l) supervising, regulating and controlling all activities carried on within a port and if it thinks fit, providing for the licensing thereof;
- (m) regulating the provision and maintenance of adequate and efficient mooring buoys, landing-places, mooring and berthing facilities;
- (n) regulating the reception, storage and removal of goods within and from the premises of the Authority, and for declaring the procedure to be followed for taking charge of goods which have been damaged before landing or are alleged to have been so damaged;
- (o) regulating the keeping clean of basins and other works of the Authority and the waters of any port and the approaches to any port and preventing oil, rubbish or other things being discharged or thrown or entering therein or thereon;

- (p) regulating the towage of or other assistance to vessels and the terms and conditions of such towage or assistance;
- (q) prescribing the terms and conditions for the sale and supply of water by the Authority;
- (r) regulating the safe and convenient use of the wharves, docks, landing-places and buildings maintained by the Authority;
- (s) settling the mode of payment of dues or rates leviable under this Act, facilitating their collection and preventing their evasion;
- (t) providing, regulating and controlling the operation of pilotage services;
- (u) regulating the removal of any stone, shingle, earth or other material from the bed of any area declared to be a port or the approaches to a port;
- (v) prohibiting any operation which in the opinion of the Authority is undesirable;
- (w) excluding or limiting the liability of the Authority in respect of anything done pursuant to any regulations made under this Act.

(2) The Minister, acting in accordance with the advice of the Cabinet, may exempt any vessel or any class or description of vessel from all or any of the provisions of any regulations made under subsection 1.

SCHEDULE 1

(Section 4(3))

Appointment of members

1. (1) The Authority shall consist of not more than 5 nor less than 3 members appointed by notice by the Minister.

(2) Not more than 3 and not less than 1 of the members shall be at the time of their appointment employed as public officers.

Chairman

2. (1) The Minister shall appoint 1 of the members to be the Chairman of the Authority for such period as he may specify.

(2) The Chairman shall keep the Minister fully informed concerning the activities and operations of the Authority and shall furnish the Minister with such information as the Minister may request with respect to any particular matter relating to the activities or operations of the Authority.

(3) The Authority may by instrument in writing direct that, subject to such conditions as may be specified in the instrument, such of the functions of the Authority as may be so specified shall (without prejudice to the performance of those functions by the Authority) be performed by the Chairman.

(4) The Minister shall appoint 1 of the members to be the Deputy Chairman of the Authority for such period as he may specify.

(5) In the absence or inability to act of the Chairman, the Deputy Chairman shall perform the functions of the Chairman.

(6) In the absence or inability to act of the Chairman and the Deputy Chairman the Minister may appoint 1 of the remaining members to perform the functions of the Chairman.

(7) In the absence or inability to act at any meeting of both the Chairman and the Deputy Chairman the remaining members shall elect 1 of their number to act as Chairman at that meeting.

Tenure of office

3. (1) A member shall, subject to the provisions of this Schedule, hold office for such period being not less than 2 nor more than 4 years as may be specified in the notice appointing him, but shall be eligible for re-appointment.

(2) The Minister may at any time revoke the appointment of any member if he thinks it expedient so to do, and if the appointment of the Chairman or the Deputy Chairman is so revoked he shall cease to be Chairman or Deputy Chairman as the case may be.

Resignation

4. (1) Any member, other than the Chairman and a member who is a public officer, may at any time resign his office by notice in writing addressed to the Minister and transmitted through the Chairman, and from the date of the receipt by the Minister of such notice such member shall cease to be a member of the Authority.

(2) The Chairman may at any time resign his office by notice in writing addressed to the Minister, and such resignation shall take effect as from the date of the receipt of such notice by the Minister.

Authentication of seal and documents

5. All documents, other than those required by law to be under seal, made by, and all decisions of, the Authority may be signified under the hand of the Chairman or any member authorised to act in that behalf.

Procedure and meetings

6. (1) The Authority shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Authority shall determine.

(2) The Chairman may at any time call a special meeting of the Authority and shall call a special meeting to be held within 7 days of a written request to that effect addressed to him by any 2 members.

(3) The quorum of the Authority shall be 3, including the Chairman or the Deputy Chairman or the member elected to act as the Chairman as aforesaid.

(4) Minutes in proper form for each meeting shall be kept and shall be confirmed, whenever practicable, at the next meeting. Certified copies of such minutes when so confirmed shall be forwarded to the Minister.

(5) The Authority may co-opt any 1 or more persons to attend any particular meeting of the Authority for the purposes of assisting or advising the Authority, but no such co-opted person shall have any right to vote.

(6) Subject to the provisions of this Schedule, the Authority may regulate its own proceedings.

Allowances to members of Authority

7. Members of the Authority may be paid, out of the funds of the Authority, such travelling and other expenses as may be incurred by them in respect of their duties as members of the Authority, and, excepting those members who are public officers, an attendance allowance at such rate as may be determined from time to time by the Minister.

Protection of members of Authority

8. (1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Authority in respect of any act done bona fide in pursuance or execution or intended execution of this Act.

(2) Where any member of the Authority is exempt from liability by reason only of the provisions of this paragraph, the Authority shall be liable to the extent that it would be if the said member was a servant or agent of the Authority.

Declaration of interest of member

9. If a member of the Authority has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter, and is present at a meeting of the Authority at which the contract or other matter is the subject of consideration, he shall, as soon as practicable after the commencement of the meeting, disclose to the Authority the fact and nature of his interest, and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

SCHEDULE 2 (Section 4(4))

Appointment of staff of Authority

1. (1) The Authority shall, after consultation with the Public Service Commission, appoint a Ports Master.

(2) The Ports Master shall be the Chief Executive of the Authority, and shall direct the entire staff and all other administrative and operational functions of the Authority.

(3) The Authority shall from time to time establish such other posts (including that of Ports Master) as it considers necessary and proper for the due and efficient administration, management and performance by the Authority of its duties under this Act and shall, acting on the recommendation of the Public Service Commission, appoint staff to fill those posts.

(4) The termination of appointment, dismissal and disciplinary control of the staff of the Authority shall be vested in the Authority, acting on the recommendation of the Public Service Commission.

(5) The Public Service Commission may second to any office in the service of the Authority a public officer and the Public Service Commission may approve the transfer of an officer from the service of the Authority to the public service or from the public service to the service of the Authority.

Responsibility of certain officers

2. All officers charged with the receipt, accounting for, or disbursements of moneys or with the custody or delivery of stores or other property, belonging to the Authority shall be individually responsible for the due and efficient discharge of their respective duties, and for the exercise of proper supervision of the accounts kept or controlled by them and of all the property entrusted to their care, and for the due observance of all rules and regulations and of all orders and instructions prescribed for their guidance.

KIRIBATI PORTS AUTHORITY ACT 1990

EXPLANATORY MEMORANDUM

The main purpose of this Act is to establish a new corporate body to be known as the "Kiribati Ports Authority" which will, among other things, take over, as a going concern, the business of providing port services currently being carried on by the Kiribati Shipping Corporation. It will thus exercise functions in relation to any port to be declared as such by the Minister.

Part I of the Act (covering sections 1 to 3) deals with preliminary matters such as interpretation of words and terms used in the Act. It also, under section 3, empowers the Minister, after consultation with the Kiribati Ports Authority, to declare any place or waters in Kiribati to be a port for the purposes of the Act.

Part II (incorporating sections 4 and 5 of the Act as well as the Schedules to the Act) provides for the establishment and membership of the Authority. Section 5 in particular seeks to vest the assets and liabilities of the Kiribati Shipping Corporation relating to port services in the proposed Kiribati Ports Authority.

Part III (incorporating sections 6 to 9 of the Act) outline the functions and powers of the Authority. Section 9 in particular empowers the Minister under certain circumstances to acquire for the Authority land required by the Authority for a purpose authorised by this Act.

Part IV (incorporating sections 10 to 16 of the Act) provides for the sources of the Authority's

funds, its borrowing powers, application of its revenues, powers of investment, etc.

Part V (incorporating sections 17 to 27) outlines, among other things, various dues and rates which the Authority is authorised to levy as consideration for utilisation of the Authority's facilities and the services it will provide.

Part VI (incorporating sections 28 to 33) provides for, among other things, the appointment of a Port Master and his powers, duties/functions in relation to vessels which will enter a port.

Part VII (incorporating sections 34 to 39), among other things, spells out the circumstances under which, and the extent to which, the Authority will be liable to third parties that utilise the Authority's facilities and/or services.

Parts VIII and IX (covering sections 40 to 51), among other things, create various offences against delinquencies such as the making of false returns to the Authority, wilful damage to the Authority's property and/or facilities; obstructing the Authority or its servants or agents in the performance of their functions, etc. Section 51, on the other hand, empowers the Minister, acting in accordance with the advice of the Cabinet, to make Regulations generally for giving effect to, and carrying out the purposes of, the Act and for its due administration. Regulations may also be made in respect of certain matters which have been particularised in the said section 51.

Michael N. Takabwe
Attorney General
1 November 1990