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Kiribati Sessional Legislation

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Incorporated Societies Act 2002

REPUBLIC OF KIRIBATI

(No. 5 of 2002)

I assent

(Sgd: Teburoro Tito)
Beretitenti
22/06/2002

AN ACT TO MAKE PROVISION FOR THE INCORPORATION OF SOCIETIES WHICH ARE NOT ESTABLISHED FOR THE PURPOSE OF PECUNIARY GAIN; AND FOR CONNECTED PURPOSES

Commencement:
2002

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

Short Title

1. This Act may be cited as the [Incorporated Societies Act 2002](#).

Interpretation

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

"Registrar" means the Registrar of Incorporated Societies appointed under section 34 or his delegate;

"society" means a society incorporated under this Act.

Incorporated societies

3. (1) Any society consisting of not less than 15 persons associated for any lawful purpose but not for pecuniary gain may, on application being made to the Registrar in accordance with this Act, become incorporated as a society under this Act.

(2) No such application shall be made except with the consent of a majority of the members of the society.

Pecuniary gain

4. Persons shall not be deemed to be associated for pecuniary gain merely by reason of any of the following circumstances, namely:

- (a) That the society itself makes a pecuniary gain, unless that gain or some part thereof is divided among or received by the members or some of them;
- (b) That the members of the society are entitled to divide between them the property of the society on its dissolution;
- (c) That the society is established for the protection or regulation of some trade, business, industry, or calling in which the members are engaged or interested, if the society itself does not engage or take part in any such trade, business, industry, or calling, or any part or branch thereof;
- (d) That any member of the society derives pecuniary gain from the society by way of salary as the servant or officer of the society;
- (e) That any member of the society derives from the society any pecuniary gain to which he would be equally entitled if he were not a member of the society;
- (f) That the members of the society compete with each other for trophies or prizes other than money prizes.

Rules of incorporated societies

5. (1) The rules of a society shall provide for the following matters, that is to say –

- (a) The name of the society, with the addition of the word "Incorporated" as the last word in that name;
- (b) The objects for which the society is established;
- (c) The modes in which persons become members of the society;
- (d) The modes in which persons cease to be members of the society;
- (e) The mode in which the rules of the society may be altered, added to, or rescinded;
- (f) The mode of summoning and holding general meetings of the society, and of voting thereat;
- (g) The appointment of officers of the society;
- (h) The control and investment of the funds of the society;

- (i) The powers (if any) of the society to borrow money;
 - (j) The disposition of the property of the society in the event of the society being put into liquidation.
 - (k) Such other matters as the Registrar may require to be provided for in any particular instance.
- (2) The rules of the society may contain any other provisions which are not inconsistent with this Act or with law.
- (3) The rules of the society and any amendment of those rules shall be printed or typewritten.
- (4) Any amendments to the Rules shall be delivered to the Registrar within 14 days from their promulgation.

Application for incorporation

6. Every application for the incorporation of a society shall be made to the Registrar with the following –

- (a) a copy of the rules of the society having written thereon an application for incorporation in the form in the First Schedule hereto or to the like effect shall be signed by not less than 15 persons being members of the society, and each subscriber to the application shall add to his signature his description and address, and his signature shall be attested by a witness who is not a subscriber. When any body corporate is a subscriber its Board or Member resolution shall be affixed to the said application;
- (b) the said rules so signed or sealed shall be delivered to the Registrar, together with the prescribed fee, and a statutory declaration made by an officer of the society or by a solicitor to the effect that a majority of the members of the society have consented to the application, and that the rules so signed or sealed are the rules of the society.

Registrar to register society if in order

7. The Registrar, on being satisfied that the requirements of this Act have been observed, shall thereupon do the following things –

- (a) Enter the name of the said society in the register kept by him under this Act, together with such other particulars with respect to the society as he thinks fit;
- (b) Issue under his seal a certificate that the society is incorporated under this Act;
- (c) Register the rules of the society by sealing with his seal the said copies thereof;
- (d) Return one of those copies to the subscribers and retain the other copy.

Certificate of incorporation to be conclusive evidence of registration

8. Every certificate of incorporation issued under the seal of the Registrar shall be conclusive evidence that all statutory requirements in respect of registration and of matters precedent and incidental thereto have been complied with, and that the society is authorised to be registered and has been duly registered and incorporated under this Act.

Upon issue of certificate members to be a body corporate

9. Upon the issue of the certificate of incorporation the subscribers to the rules of the society, together with all other persons who are then members of the society or who afterwards become members of the society in accordance with the rules thereof, shall, as from the date of incorporation mentioned in the certificate, be a body corporate by the name contained in the said rules, having perpetual succession and a common seal, and capable forthwith, subject to this Act and to the said rules, of exercising all the functions of a body corporate and of holding land.

Name of society not to be the same as the name of another society or body corporate

10. (1) No society shall be registered under a name which is identical with that of –

- (a) any other society registered under this Act; or
- (b) a company carrying on business in Kiribati (whether registered in Kiribati or not); or
- (c) any other body corporate established or registered in Kiribati under any Act, or, so nearly resembles that name as to be calculated to deceive; or
- (d) any registered business name,

except where that other society or company or body corporate or business, as the case may be, signifies its consent in such manner as the Registrar requires, and the Registrar is satisfied that registration of the society by the proposed name will not be contrary to the public interest.

- (2) No society shall be registered by a name which, in the opinion of the Registrar, is undesirable.

Penalty for improper use of word "Incorporated" etc

11. If any society, not being a society incorporated under this Act, operates under any name or title of which the word "Incorporated", "Company", "Limited" or any contraction or imitation of such word, is included so as to leave an inference that the society is so incorporated under this Act, every member of the society commits an offence and shall be liable on conviction to a fine not exceeding \$20 for every day upon which that name or title has been used.

Change of name

12. (1) If -

(a) through inadvertence or otherwise, a society at its first registration, or on its registration by a new name, is registered by a name which is in contravention of section 10, or of any enactment, other than this Act, relating to restrictions on the use of any name; or

(b) a society is for the time being registered by a name which, in the opinion of the Registrar, is undesirable,

the society shall, within a period of 6 weeks from the date of its being required by the Registrar to do so, or such longer period as he may allow, change its name in accordance with section 21(6) to a name that is not in contravention as aforesaid and is not, in the opinion of the Registrar, undesirable.

(2) If a society makes default in complying with the requirements of subsection (1), such society commits an offence and shall be liable on conviction to a fine not exceeding \$20 for every day on which the offence has continued.

(3) No fee shall be payable to the Registrar in respect of an alteration of the rules of a society if the alteration only changes the society's name pursuant to the requirements of subsection (1).

No liability on members for obligation of society

13. Except when otherwise expressly provided in this Act, membership of a society shall not of itself impose on the members any liability in respect of any contract, debt, or other obligation made or incurred by the society.

Members to have no right to property of society

14. Except when otherwise expressly provided by this Act or by the rules of a society, membership of a society shall not be deemed to confer upon the members any right, title, or interest, either legal or equitable, in the property of the society.

Contracts by society

15. (1) Any contract which, if made between private persons, must be by deed shall, when made by a society, be in writing under the common seal of the society.

(2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith may, when made by a society, be in writing signed by any person acting on behalf of and under the express or implied authority of the society.

(3) Any contract which, if made between private persons, might be made without writing may, when made by a society, be made without writing by any person acting on behalf of and under the express or implied authority of the society.

Service of summons, etc, on society

16. Any summons, notice, order, or other document required to be served upon a society may be served by leaving the same at the society's registered office, or by sending it through the post in a registered letter addressed to the society at that office.

Security for costs where society is plaintiff

17. Where a society is the plaintiff in any action or other legal proceeding, and there appears by any credible testimony to be reason to believe that if the defendant is successful in his defence the assets of the society will be insufficient to pay his costs, any Court or Judge having jurisdiction in the matter may require sufficient security to be given for those costs, and may stay all proceedings until that security is given

Registered office

18. (1) Every society shall have a registered office to which all communications may be addressed.

(2) Notice of the situation of that office, and of any change therein, shall be given to the Registrar and recorded by him.

(3) Until that notice is given, the society shall be deemed not to have complied with the provisions of this section as to having a registered office.

(4) If any society carries on its operations without having a registered office, every officer of the society and every member of the committee or other governing body of the society commits an offence and shall be liable on conviction to a fine not exceeding 50¢ for every day during which those operations are carried on.

Restriction of operations of society

19. (1) If any society carries on or proposes to carry on any operation which is beyond the scope of the objects of the society as defined in its rules, the Registrar may give notice in writing to the society not to carry on that operation.

(2) If after the receipt of that notice the society fails or refuses to conform thereto, every officer of the society and every member of the committee or other governing body of the society commits an offence and shall be liable on conviction to a fine not exceeding \$20 for every day during which that failure or refusal continues, unless he proves that the failure or refusal has taken place without his authority or consent.

Society not to engage in operations involving pecuniary gain

20. (1) No society shall do any act of such a nature that if the doing thereof were one of the objects for which the society was established the members of the society would be deemed to be associated for pecuniary gain within the meaning of sections 4 and 5 hereof.

(2) Every society which does any such act commits an offence and shall be liable on conviction to a fine not exceeding \$5000.

(3) Every member who aids, abets, procures, assists, or takes part in the doing of any such act by a society shall be liable to a fine not exceeding \$2000, and all such members shall be jointly and severally liable to any creditor of the society for all debts and obligations incurred by the society in or in consequence of the doing of that act.

(4) Every member who derives any pecuniary gain from any act done by the society in breach of this section shall be deemed to have received the same to the use of the society, and the same may be recovered by the society accordingly.

Alteration of rules

21. (1) A society may from time to time alter its rules in manner provided by the said rules, but subject to the provisions of this Act.

(2) Every such alteration shall be in writing, signed or sealed in duplicate by at least 3 members of the society, and the documents so signed or sealed shall be delivered to the Registrar, accompanied by a statutory declaration made by a solicitor or at least one member to the effect that the said alteration has been made in accordance with the rules of the society.

(3) The Registrar, if satisfied that the alteration has been duly made, and that the rules as so altered conform in all respects to this Act, shall register the alteration in like manner as in the case of the original rules, and the said alteration shall thereupon take effect according to the tenor thereof. Such registration shall be conclusive evidence that all conditions precedent to the making of the alteration, or to the registration thereof, have been duly fulfilled.

(4) Notwithstanding anything in subsection (3), the High Court, on an application made to it by any member of the society, may in its discretion, if it is satisfied that any such condition as aforesaid has not been duly fulfilled, declare the alteration to be void in whole or in part, and order that the registration be cancelled in whole or in part, and may by the order give such directions and make such provisions as seem just in the circumstances of the case. On the delivery to the Registrar of a sealed copy of the Court's order, the Registrar shall forthwith amend the register accordingly.

(5) No alteration in the objects of a society shall be registered unless the Registrar is satisfied either that the alteration is not of such a nature as to prejudicially affect any existing creditor of the society, or that all creditors who may be so affected consent to the alteration.

(6) In the case of any alteration of the name of a society the Registrar may, in his discretion, refuse to register the alteration until the making thereof has been publicly advertised in such manner as the Registrar thinks fit.

Register of members

22. (1) Every society shall keep a register of its members.

(2) The register shall contain the names, addresses, and occupations of those members, and the dates at which they became members.

(3) Every society shall from time to time, when required by the Registrar so to do, send to him a list of the names, addresses, and occupations of its members, accompanied by a

statutory declaration verifying that list and made by some officer of the society.

Annual financial statement and identification of executive

23. (1) Every society shall deliver annually to the Registrar, in such form and at such time as he requires, a statement containing the following particulars:

- (a) The income and expenditure of the society during the society's last financial year;
 - (b) The assets and liabilities of the society at the close of the said year;
 - (c) All mortgages, charges, and securities of any description affecting any of the property of the society at the close of the said year.
- (2) The said statement shall be accompanied by a certificate signed by some officer of the society to the effect that the statement has been submitted to and approved by the members of the society at a general meeting.
- (3) If any default is made by a society in the observance of the provisions of this section, every officer of the society shall be liable to a fine not exceeding \$20 for every day during which the default continues.
- (4) Unless otherwise directed by the Registrar the time for delivery of the financial statement under subsection (1) of this section shall be 6 months from the end of the financial year of the society.
- (5) Every society shall, unless otherwise directed by the Registrar, at the same time that it delivers its financial statement, deliver a Return of Particulars in such form, if any, as the Minister may direct, which shall contain the name address and occupation of every executive member of that society.

Power to compromise with creditors and members

- 24.** (1) Where a compromise or arrangement is proposed between a society and its creditors or any class of them, or between the society and its members or any class of them, the High Court may, on the application of the society or of any creditor or member of the society, or, in the case of a society in liquidation, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the society or class of members, as the case may be, to be summoned in such manner as the Court directs.
- (2) If any question arises under this section as to whether or not any members or creditors of a society constitute a class of members or a class of creditors, as the case may be, it shall be determined by the High Court as in the circumstances it thinks proper.
- (3) If a majority in number representing not less than three-fourths in value of the creditors or class of creditors or not less than three-fourths of the members or class of members, as the case may be, voting in person or, where proxies are allowed, by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the High Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also

on the society, or, in the case of a society in liquidation, on the liquidator of the society.

(4) An order made under subsection (3) shall have no effect until a sealed copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the rules of the society issued after the order has been made.

(5) If a society contravenes subsection (4), the society and every officer of the society who is in default shall be liable on conviction to a fine not exceeding \$4 for each copy in respect of which default is made.

(6) In this section and in section 25 -

"Creditor" includes every person who has a claim that in the liquidation of a society would be admitted as a claim in accordance with the winding up provisions of the Companies Ordinance (as applied by section 24 (4) and section 26 (3):

"Officer of the society who is in default" means any officer of the society who -

(a) knowingly and wilfully authorises or permits the default, refusal, or contravention mentioned in this section or in section 23; or

(b) knew or ought to have known of the default, refusal, or contravention and did not take all reasonable steps to secure compliance by the society with the requirements specified in or imposed by this section or section 25.

Information as to compromises with creditors and members

25. (1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 24, there shall—

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the officers of the society, whether as officers or as members or as creditors of the society or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests and of other persons; and

(b) In every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of creditors of the society, the said statement shall give the like explanation as respects any trustees appointed on behalf of creditors as it is required to give as respects the society's officers.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished

by the society free of charge with a copy of the statement.

(4) Where a society makes default in complying with any requirement of this section, the society and every officer of the society who is in default shall be liable on summary conviction to a fine not exceeding \$1,000, and, for the purpose of this subsection, any liquidator of the society and any trustees appointed on behalf of creditors of the society shall be deemed to be officers of the society: provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person, being an officer of the society or a trustee appointed on behalf of creditors, to supply the necessary particulars as to his interests.

(5) It shall be the duty of any officer of the society and of any trustee appointed on behalf of creditors of the society to give notice to the society of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this subsection shall be liable on summary conviction to a fine not exceeding \$100.]

Members may resolve to put society into liquidation

26. (1) A society may be put into liquidation if the society, at a general meeting of its members, passes a resolution appointing a liquidator, and the resolution is confirmed at a subsequent general meeting called together for that purpose and held not earlier than 30 days after the date on which the resolution to be confirmed was passed.

(2) In subsection (1) of this section, the term 'resolution' means a resolution carried by a majority of the valid votes cast by members voting at the general meeting in person or, if so allowed by the society's rules, by proxy; and, for the purposes of that subsection, the resolution shall be taken to be confirmed at the subsequent general meeting if the confirmation is carried by such a majority.

(3) Subject to this Act, the provisions of sections 119 to 129 of the Companies Ordinance (Cap. 10A) shall apply to the liquidation of the society, with such modifications as may be necessary.

High Court may put society into liquidation

27. A society may be put into liquidation by the appointment by the High Court of a liquidator under the following circumstances:

- (a) If the society suspends its operations for the space of a year; or
- (b) If the members of the society are reduced in number to less than 15; or
- (c) If the society is unable to pay its debts; or
- (d) If the society carries on any operation whereby any member makes any pecuniary gain contrary to the provisions of this Act; or
- (e) If the High Court or a Judge thereof is of the opinion that it is just and equitable that the society should be put into liquidation.

Application to Court to appoint liquidator

28. (1) Any application to the High Court for the appointment of a liquidator of a society shall be made by the society or by a member or by a creditor or by the Registrar.

(2) All costs incurred by the Registrar in making an application shall, unless the Court or a Judge thereof otherwise orders, be a first charge on the assets of the society.

(3) Subject to this Act, the provisions in the Companies Ordinance (Cap. 10A) in relation to winding up shall apply, with such modifications as may be necessary—

- (a) To the application for the appointment of a liquidator as if the application was an application under section 129 of that Ordinance; and
- (b) To the liquidation as if an official receiver had been appointed under section 129 of that Ordinance.

Division of surplus assets on winding up

29. (1) On the liquidation of a society or on its dissolution by the Registrar, all surplus assets after the payment of all costs, debts, and liabilities shall, subject to any trust affecting the same, be disposed of in the manner provided by the rules of the society, or if such assets cannot be disposed of in accordance with the rules, then as the Registrar directs, subject to subsection (3) hereof.

(2) If the surplus assets are subject to any trust, then such assets shall be disposed of –

(a) as the High Court directs in the case where a liquidator was appointed by the Court; or

(b) as the Registrar directs in a case where either –

(i) a liquidator was appointed by a resolution of the members,
or

(ii) in the case of a dissolution by the Registrar,

but an appeal shall lie from any such decision of the Registrar to the High Court at the suit of any person interested.

(3) No appeal from any decision of the Registrar under subsection (1) or from subsection (2)(b) shall lie unless notice thereof is delivered to the Registrar within one month after the date on which the decision was given.

(4) Where any direction is given under the foregoing subsection, there may be included in that direction, or in a subsequent direction given by a Registrar or the Court which gave or had power to give the original direction, all or any of the following further directions –

(a) A direction vesting all or any of the assets of the society without transfer, conveyance, or assignment in such person or persons as may be

specified in the direction, subject to all charges, encumbrances, estates, and interests affecting the same;

(b) If anything remains to be done to complete any matters outstanding on the liquidation or dissolution of the society or to provide for the payment of all costs, debts, and liabilities of and in relation to the society and its liquidation or dissolution, such directions as may be necessary or expedient to make provision for the completion and payment thereof;

(c) A direction conferring on any person such powers as may be necessary or expedient to enable him to carry out the functions and duties imposed on him by any direction given under this section.

(5) Every direction given under subsection (4) shall have effect according to its tenor as soon as the direction becomes final; and for the purposes of this subsection such a direction shall become final -

(a) On the date specified therein if that date commences after the time determined under paragraph (b) of this subsection;

(b) In any case where an appeal lies and a proposed Appellant applies for an adjusted finality date as may not in the circumstances, and subject to the further direction of the High Court, not make such an appeal a nullity.

(6) Where by any direction under this section, any estate or interest in land is vested in any person, then, subject to the provisions of that direction, the Magistrates' Court in which the land is situated, on application made to it by that person in such form, if any, as may be prescribed by the Minister; and on the registration or deposit of such documents or plans as the Magistrates' Court may require, shall make such entries in the register and generally do all such things as may be necessary to give full effect to the provisions of the direction.

(7) Except as provided in the preceding subsections, no appeal shall lie against any direction of the Registrar given under this section.

(8) This section shall bind the Republic.

Dissolution by Registrar

30. (1) If at any time the Registrar is satisfied that -

(a) a society is no longer carrying on its operations; or

(b) a society has been registered by reason of a mistake of fact or law; or

(c) a society has failed, for a period of at least 9 months from providing information or financial statement as required under section 23 of this Act,

he may after giving such notice as he considers appropriate, make under his signature a declaration that the society is dissolved as from the date of the declaration, and he shall thereupon publish the declaration according to law, and make in the register an entry of the dissolution of the society.

(2) On the making of that entry the society shall be dissolved as from the date of the declaration.

(3) At any time thereafter the Registrar, on being satisfied that the declaration was made in error and ought to be revoked, may revoke the same by a declaration published according to law, and shall thereupon make an entry of that revocation in the register, and the society shall thereupon be revived from the date of the dissolution thereof as if no such dissolution had taken place.

Corporate body may become member of society

31. Any corporate body, whether incorporated under this Act or in any other manner, may be a member of a society incorporated under this Act, unless the purposes for which the society is established are beyond the objects of the said corporate body.

Pecuniary gain received by member of such corporate body

32. When any corporate body is a member of a society incorporated under this Act, any pecuniary gain received by any member of that corporate body shall be deemed for the purposes of this Act to be pecuniary gain received by a member of the society, and in respect of any such pecuniary gain every member of that corporate body shall be deemed to be a member of the society.

Corporate body to be equivalent to 3 members

33. In calculating,

(a) the number of subscribers to the rules of a society for the purposes of section 3 or section 6; or

(b) the number of members of a society for the purposes of section 3 or section 24,

every corporate body that is a subscriber or member shall be taken as the equivalent of 3 subscribers or 3 members, as the case may require.

Registrar

34. (1) For the purposes of this Act, there shall be a Registrar of Incorporated Societies who shall be appointed by the Beretitenti, acting in accordance with the advice of the Public Service Commission.

(2) The Registrar so appointed may hold his office in conjunction with any other office which the Beretitenti deems not incompatible therewith.

(3) The Registrar shall have the power to delegate his functions.

Registrar to keep register of incorporated societies

35. (1) The Registrar shall keep a register in which there shall be recorded all matters required by this Act to be recorded by the Registrar.

(2) The Registrar shall keep a seal for the authentication of any documents required for

the purposes of this Act.

(3) There shall be paid to the Registrar such fees as may be prescribed in respect of such matters as may be so prescribed.

(4) All fees so paid to the Registrar shall be paid by him into the Public Account and shall form part of the Consolidated Account.

(5) All expenses incurred in the administration of this Act shall be paid out of money appropriated by Parliament.

Powers of inspection of Registrar

36. (1) Subject to subsection (3), the Registrar or any person authorised by him may, for the purpose of ascertaining whether a society or any officer of a society is complying or has complied with this Act, or of ascertaining whether the Registrar should exercise any of his rights or powers under this Act, or of detecting offences against this Act, the Registrar may -

(a) require a society or any officer of a society to produce for inspection any registers, records, accounts, books, or papers that are kept by the society; and

(b) in any case where the Registrar or the person authorised by him considers that the aforesaid purpose cannot be achieved by inspecting only the documents specified in paragraph (a), or where such documents are not produced for inspection, require any person (including any officer employed in or in connection with any Department of Government) to produce for inspection any registers, records, accounts, books, or papers that contain information relating to any money or other property that is or has been managed, supervised, controlled, or held in trust by or for the society; and

(c) inspect and make records of any such registers, records, accounts, books, or papers; and

(d) for the purposes of making records thereof, take possession of and remove from the premises where they are kept, for such period of time as is reasonable in the circumstances, any such registers, records, accounts, books, or papers.

(2) A person who has made an inspection under subsection (1) shall give, divulge, or communicate any records or information that he has acquired in the course of the inspection to the Registrar.

(3) A person who has made an inspection under subsection (1) shall, upon being directed to do so by a person for the time being holding the office of Registrar, give, divulge, or communicate any records or information that he has acquired in the course of the inspection to such of the following persons as that Registrar specifies, namely:

(a) The Minister who is for the time being responsible for the administration of this Act;

(b) Any person authorised by the Registrar to receive such records or information.

(4) The Minister may, by written notice to that person, require a person for the time being holding

the office of Registrar or Deputy Registrar to give a direction under subsection (5), and that person shall comply with any such requirement.

(5) If any society refuses or fails to produce for inspection to the Registrar, or to any person authorised by the Registrar for the purposes of subsection (1), any document that the Registrar or authorised person has under that subsection required it to produce, such society commits an offence and shall be liable on conviction to a fine not exceeding \$1000.

(6) If any officer of a society or other person refuse or fails to produce for inspection to the Registrar, or to any person authorised by the Registrar for the purposes of subsection (1), any document within the power or control of that officer or person that the Registrar or authorised person has under that subsection required him to produce, that officer or person commits an offence and shall be liable on conviction to a fine not exceeding \$1000.

(7) Any person who wilfully obstructs or hinders the Registrar, or any person authorised by the Registrar for the purposes of subsection (1), while the Registrar or authorised person is making an inspection, or a record, or taking possession of, or removing any documents pursuant to that subsection, such person commits an offence and shall be liable on conviction to a fine not exceeding \$1000.

(8) Nothing in this section limits or affects legal professional privilege.

Appeals from decisions of Registrar

37. (1) Any person who is aggrieved by the refusal of the Registrar to register a society, or to register or receive any document submitted to him under this Act or who is aggrieved by any other act or decision of the Registrar under this Act, may appeal to the High Court within 21 days after the date of the refusal or other act or decision, or within such further time as the High Court may allow.

(2) On hearing the appeal, the High Court may confirm the refusal or other act or decision of the Registrar, or give such directions or make such determination in the matter as the High Court thinks fit.

(3) No right of appeal shall lie under this section against any act or decision of the Registrar—

(a) In respect of which there is any express provision in this Act in the nature of an appeal or review; or

(b) That is declared by this Act to be conclusive or final, or that is embodied in any document declared by this Act to be conclusive evidence of any act, decision, matter, or thing.

(4) Notwithstanding any other provision of any Act or any rule of law, where a person appeals or applies to the High Court in respect of an act or decision of the Registrar under section 35, until a decision on the appeal or application is given, the Registrar, and any person authorised by him under that section for the purpose, may continue to exercise his powers under that section as if no such appeal or application had been made, and no person shall be excused from fulfilling his obligations under that section by reason of that appeal or application: provided that, to the extent that an appeal or application in respect of any such act or decision is allowed or granted, as the case may be -

(a) the Registrar shall ensure that, forthwith after the decision on the appeal or application is given, all records made by him, or by a person authorised by him for that purpose, under section 36(1)(c) in respect of that act or decision are destroyed or expunged; and

(b) no information acquired under paragraph (a) or paragraph (b) of section 36(1) in respect of that act or decision shall be admissible in evidence in any proceedings.

Kiribati Red Cross Society

38. (1) Section 18 (which relates to the registered office to be notified to Registrar), Section 22 (which relates to List of Members of society to be notified to Registrar), and Section 23 (which relates to annual financial statement to be delivered to the Registrar) of this Act shall apply to the Kiribati Red Cross Society (see, Kiribati Red Cross Society Act 1986).

(2) The Kiribati Red Cross Society shall only be bound by such provisions of this Act other than those described in subsection (1) as it shall adopt by resolution and notify to the Registrar.

Regulations

39. The Minister may make such regulations consistent with this Act as he deems necessary for carrying into full effect the provisions of this Act.

SCHEDULES

FIRST SCHEDULE

Section 6

APPLICATION FOR INCORPORATION

We, the several persons whose names are subscribed hereto, being members of the above-mentioned society, hereby make application for the incorporation of the society under the foregoing rules, in accordance with the Incorporated Societies Act 2002.

Dated this day of, 20..... .

INCORPORATED SOCIETIES ACT 2002

EXPLANATORY MEMORANDUM

1. There are occasions when a group of persons with social or charitable purpose have been impaired in their ability to enter into transactions or obtain overseas or other project funding because they are not recognisable legal persons. Such bodies cannot be incorporated under the Companies Ordinance because they are not organised for the purpose of earning business income for members. The Act is modelled on the New Zealand legislation is common in the Commonwealth jurisdictions. It creates a system for recognising such social persons.

2. The Act would allow any group to be incorporated by registration of their name, their purpose and Rules and by identification of the persons who will accept responsibility from time to time, for the proper running of the affairs of the group.

3. Persons who deal with the society will be able to have some confidence that there is a Registry which ensures that proper registration and annual filings are available, and that if there is a claim to be made against the society, that the office holders and the registered offence can be easily identified. It is important for the Government to know, on behalf of the people, that such organisations are managed by responsible persons, and that any complaint of mismanagement will not be frustrated, only because identification of responsible individuals is difficult.

4. Where a society needs to be wound for any reason, a process for liquidation is prescribed by the legislation.

5. In addition, there should be also considered consequential amendment of any similar legislation, like the Red Cross Society Act, so that such legal bodies are brought into the incorporated society regime. Such existing bodies will be obliged to disclose to the public through the Registry, who are the present persons managing the society, and such other corporate matters in which the public and the Government have a proper interest.

6. Some of the requirements and obligations of a society under the Act are as follows:

6.1 there must be at least 15 members (s 3);

6.2 a majority of the members must consent to its registration (s 3); of Rules that provide for the matters set out in section 5; and any changes to the Rules must be notified to the Registrar (s 22);

6.3 it must make an application for incorporation (s 6);

6.4 members have no right to the property of the society (s 14);

6.5 there must be a registered office (s 18);

6.6 its operations must conform to its stated objects (s 19);

6.7 it must refrain from engaging in activities for pecuniary gain as defined by s 4 (s 20);

6.8 there shall be kept a register of members, a copy of which shall go to the Registrar when required (s 22);

6.9 an annual financial statement and a statement of particulars showing the executive members shall be delivered to the Registrar (s 23);

6.10 it may be wound up and its assets liquidated if it suspends operations, it becomes too small, it becomes insolvent, or it breaches the Act or the High Court thinks it is just and equitable that it be wound up (s 27);

6.11 it must cooperate with the Registrar when he demands to investigate the affairs of the society (s 36).

Michael N Takabwebwe
Attorney General
6 November 2001

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