

REPUBLIC OF KIRIBATI



KIRIBATI FINANCIAL INSTITUTIONS ACT 2021

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REPUBLIC OF KIRIBATI



(No.21 of 2021)



An Act

entitled

**AN ACT TO REGULATE THE FINANCIAL INSTITUTIONS IN KIRIBATI
AND FOR CONNECTED PURPOSES**

Commencement date
2021

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

Part 1
Preliminary matters

1 Title

This Act is the *Kiribati Financial Institutions Act 2021*.

2 Commencement

This Act comes into force on a date appointed by the Minister by notice.

3 Purposes

The purposes of this Act are to—

- (a) maintain the quality of governance of licensed financial institutions;
- (b) protect the soundness of the financial system; and
- (c) minimise detriment to the interests of depositors and creditors.

I assent,
A handwritten signature in blue ink, appearing to read "Beretitenti".
21/12/21

4 Functions of Authority under this Act

- (1) The Authority has the functions of regulating, licensing, and supervising financial institutions in accordance with this Act.
- (2) For the purpose of performing its functions under this Act, the Authority has the powers set out in this Act.
- (3) In exercising a power under this Act, the Authority must be guided by the principle that the exercise of the power should be necessary or desirable for one or more of the purposes specified in section 3.

5 Application to the Republic

This Act binds the Republic.

6 Provisions of this Act prevail

- (1) The provisions of this Act prevail to the extent that the provisions of this Act conflict or are inconsistent with the provisions of any other Act that applies to a licensed financial institution.
- (2) Subsection (1) is subject to any other provision in any Act that expressly provides for the provisions of another Act to prevail over the provisions of this Act.

7 Interpretation

- (1) In this Act, unless the context otherwise requires,—
auditor,—

- (a) in the case of a statutory corporation that, under the law establishing the statutory corporation, is audited by the Auditor-General, means the Auditor-General or any auditor approved for the purposes by the Auditor-General; and
 - (b) in every other case, means an auditor who holds a certificate of public practice issued by the appropriate authority in Kiribati

Authority means the Financial Supervisory Authority of Kiribati established by the Financial Supervisory Authority of Kiribati Act 2021

bank means any financial institution carrying on banking business

banking business means—

- (a) accepting deposits of money from members of the public that are payable on demand or after a fixed period or after notice;
- (b) the sale or placement of bonds, certificates, notes, or other securities and the use of such funds, in whole or in part, for loans or investments to the account of, and at the risk of, members of the public; or
- (c) any other activity that the Authority—

- (i) recognises as customary banking practice; and
- (ii) authorises a licensed financial institution engaging in the activities described in paragraphs (a) and (b) to do

company means—

- (a) a company registered or re-registered under the Companies Act 2021;
- (b) a statutory corporation; or
- (c) an overseas company

Controller means a person appointed under section 40(2)(c) to assume control of a licensed financial institution or a branch of the institution in Kiribati under Part 7

credit institution means any financial institution that—

- (a) provides loans of any kind to the public; but
- (b) is not a bank

director includes an individual occupying the position of director of a company, by whatever name the individual may be called

financial business means any of the following types of business:

- (a) acceptance of any kind of deposits of money and financial instruments;
- (b) provision of insurance of any class;
- (c) provision of loans to the public;
- (d) provision of superannuation;
- (e) dealings of any kind with foreign exchange;
- (f) provision of international and domestic money transfers; or
- (g) provision of investment banking

financial institution means any company or person carrying on any financial business

head office means,—

- (a) for a company that has a registered office in Kiribati, the company's registered office; and
- (b) in any other case, the company's principal place of business in Kiribati

licensed means licensed under this Act

manager includes any individual for the time being in charge of the head office in Kiribati of any financial institution

Minister means the Minister responsible for Finance

non-resident controlled, in relation to a financial institution, means controlled, by any means whatever, by a person not a resident of Kiribati

officer includes a director, manager, or other employee

overseas company has the meaning given in clause 1 of Schedule 1 of the Companies Act 2021

person has the meaning given in clause 1 of Schedule 1 of the Companies Act 2021

relative has the meaning given in clause 1 of Schedule 1 of the Companies Act 2021

statutory corporation means a body corporate established by any written law other than a law relating to the formation and registration of companies

subsidiary has the meaning given in clause 4 of Schedule 1 of the Companies Act 2021

writing has the meaning given in clause 1 of Schedule 1 of the Companies Act 2021.

(2) A person (A) is an **associated person** of a financial institution if—

- (a) A directly or indirectly controls the management of the financial institution; or
- (b) A owns directly or indirectly 20% or more in nominal value of the equity share capital of the financial institution; or
- (c) the financial institution directly or indirectly controls A; or
- (d) the financial institution owns directly or indirectly 20% or more of the equity share capital of A.

(3) The Government is excluded from being an associated person.

(4) A person is deemed to be carrying on financial business if, in an advertisement, the person offers to undertake any financial business.

8 Fit and proper person test

For the purposes of this Act, a person is not a fit and proper person for a role if—

- (a) the person has been a director of, or directly or indirectly concerned in the management of, a financial institution that has had its licence revoked in accordance with this Act (or a similar Act overseas) or has been wound up by a court; or
- (b) the person has been sentenced by a court in any country to a term of imprisonment for an offence involving dishonesty; or
- (c) the person has been a person who is or becomes bankrupt or enters a scheme of arrangement or composition with their creditors; or
- (d) the person has been involved in a serious breach, or in a number of less serious breaches, of this Act; or
- (e) the Authority has reasonable grounds to believe that the person is not a fit and proper person for the role for any other reason, including:
 - (i) the person is not capable of effectively performing the obligations of the role;

(ii) the person is likely to breach the obligations of the role.

9 Two or more financial institutions under the same ownership

(1) For the purposes of this Act, the Authority may treat two or more financial institutions that are, directly or indirectly, owned or controlled by the same person as a single financial institution in relation to their operation in Kiribati.

(2) For the purposes of subsection (1), a person (A) owns or controls a financial institution if A, directly or indirectly,—

- (a) controls the management of the financial institution; or
- (b) owns 50% or more in nominal value of the equity share capital of the financial institution.

10 Subsidiary companies of financial institutions

(1) For the purposes of this Act, the Authority may treat a financial institution and its subsidiary companies as a single financial institution in relation to their operation in Kiribati.

(2) For that purpose, the Authority may exercise its powers under this Act in relation to the subsidiary as if the subsidiary were a financial institution.

Part 2
Licensing of financial institutions

11 Prohibition on carrying on financial business without licence

(1) A person must not carry on financial business in Kiribati unless the person has a licence under this Act.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable to a fine not exceeding \$500 for each day that the contravention continues.

(3) Any person who holds funds obtained by carrying on financial business without a licence must repay the funds in accordance with the directions of the Authority.

(4) Subsection (3) does not relieve any person from liability to criminal proceedings arising out of any contravention of the provisions of this Act.

12 Application for licence

(1) A person that intends to carry on financial business in Kiribati may apply to the Authority for a licence.

(2) An application must be made in the manner specified by the Authority and include—

- (a) an authenticated copy of the instrument under which the person is formed;

- (b) particulars of the address of the persons head office, and the name and address of every member of the board and of its principal officers;
- (c) copies of the latest 3 audited annual balance sheets and profit and loss accounts of the person;
- (d) particulars of the business and objectives of the person;
- (e) particulars of the persons principal place of business and any other place in Kiribati where it proposes to do business;
- (f) particulars of the area or areas of Kiribati in which the person intends to offer its financial business;
- (g) an undertaking, sworn by an officer at the persons head office and supported by an appropriate resolution of its board of directors, that the person will, on demand of the Authority, provide, in the currency specified by the Authority, funds necessary to cover all obligations and liabilities incurred in the conduct of financial business in Kiribati;
- (h) for a person incorporated outside Kiribati only, written confirmation from the banking or financial markets supervisory authority in the company's country of incorporation that the supervisory authority has no objection to the proposal to carry on financial business in Kiribati;
- (i) for a person incorporated outside Kiribati only, the name and address of a person in Kiribati on whom any process, notice or directive relating to the person may be served; and
- (j) such other information or requirements as the Authority may specify.

(3) Service of any process, notice or directive on a person specified in subsection (1)(j) (or on any person that the person notifies to the Authority in place of that person) is to be treated as service on the financial institution.

(4) Every application for a licence to carry on financial business must be accompanied by payment of any fee prescribed by the Authority.

(5) Any person who, in connection with an application under this section, knowingly or recklessly provides any information that is false or misleading in any material particular is guilty of an offence and liable to a fine not exceeding \$5,000.

13 Grant of licence

(1) The Authority may grant a licence if satisfied that—

- (a) the application complies with sections 12(2) and (4);
- (b) the applicant complies with the requirements of any laws and regulations that apply to the applicant and to its business;
- (c) the grant of a licence to the applicant is justified in the public interest and in the prevailing general and local economic conditions;

- (d) the manager of the applicant and the members of its Board are fit and proper persons;
- (e) the applicant meets the minimum capital requirements specified by the Authority under section 27; and
- (f) the governance and administration of the applicant are consistent with achieving the purposes of this Act.

(2) For the purposes of subsection (1)(f), if the applicant is non-resident controlled, the Authority may take into account—

- (a) the institution's international reputation; and
- (b) the ownership spread of the institution or of its holding company; and
- (c) the relevant law and regulatory requirements relating to the licensing and supervision of financial institutions in its country of incorporation.

(3) The Authority may request further information from the applicant and may consider that information, or information from any other source, when deciding whether to grant a licence.

(4) The Authority may—

- (a) grant a licence (with or without conditions); or
- (b) decline to grant a licence (in which case it must provide reasons for its decision to the applicant).

(5) The Authority must make its decision under subsection (4) within 120 days after the receipt of an application or, where further information has been requested from the applicant, within 120 days after it has received that information.

(6) If the Authority grants a licence, it must notify the grant of the licence in the Gazette.

14 Certain financial institutions deemed to be licensed

(1) The financial institutions specified in the Schedule are deemed to be licensed under this Act on the commencement of this Act and the Authority must issue a licence to each of those financial institutions accordingly.

(2) A financial institution specified in the Schedule that, on the commencement of this Act, is in contravention of any provision of this Act must—

- (a) within one month of commencement, provide to the Authority a report detailing the contraventions;
- (b) within six months of commencement, rectify the contraventions.

(3) This Act applies to a licence issued under subsection (1) as if the licence were granted under section 13, except that,—

- (a) in the month following commencement, the Authority may not impose any penalty or suspend or revoke the licence in relation to any contravention; or

- (b) in the six months following commencement, the Authority may not impose any penalty or suspend or revoke the licence in relation to a contravention reported to the Authority in accordance with subsection (2)(a).

15 Conditions of licence

- (1) The Authority may, at any time, impose, vary, or revoke a condition on a licence.
- (2) If the Authority proposes to impose a condition on a licence after a licence has been granted, or proposes to amend or revoke an existing condition, it must first give the licensed financial institution—
 - (a) notice of the proposal; and
 - (b) not less than 40 days to make representations on the proposal.
- (3) Without limiting subsection (1), conditions may relate to any of the following matters:
 - (a) capital in relation to the size and nature of the business;
 - (b) loan concentration and risk exposures;
 - (c) incorporation and ownership structure;
 - (d) separation of the business from other businesses and from other interests of any person owning or controlling the licensed financial institution;
 - (e) liquidity and management of assets and liabilities;
 - (f) provisioning for diminution in value of assets, including for bad and doubtful debts, and provisioning for liabilities or losses which will or may arise;
 - (g) granting of credit review of asset quality and classification of loans;
 - (h) internal controls and accounting systems; and
 - (i) any other matters the Authority considers are necessary or desirable for the purposes of the Act.
- (4) It is a condition of every licence for a company or person incorporated outside Kiribati that the company or person notify the Authority if there is any change to the name and address of the person in Kiribati on whom any process, notice, or directive may be served.

16 Display of licence

- (1) A licensed financial institution must display a copy of its licence conspicuously in a public area of each of the institution's places of business in Kiribati.
- (2) A licensed financial institution that contravenes subsection (1) is liable to a penalty—
 - (a) not exceeding \$1,000; and
 - (b) imposed by the Authority.

17 Revocation and suspension of license

(1) The Authority may, by notice to a licensed financial institution, revoke or suspend the institution's licence—

- (a) if the institution fails to comply with any directive issued by the Authority under this or any other Act; or
- (b) if the institution ceases to carry on the business for which it was licensed; or
- (c) if the institution goes into liquidation, is wound up or is otherwise dissolved; or
- (d) if the institution takes an action prohibited by section 23(1); or
- (e) in the circumstances specified in section 30; or
- (f) if the institution fails to commence carrying on financial business within the time specified by the Authority.

(2) If the licence is revoked or suspended, the financial institution must cease to carry on financial business unless and until the revocation or suspension is rescinded.

(3) If the Authority proposes to revoke or suspend a licence under this section, it must first give the financial institution—

- (a) notice of the proposal; and
- (b) not less than 40 days to make representations on the proposal.

(4) However, if subsection (1)(d) applies to the financial institution,—

- (a) the Authority is not required to give advance notice of revocation or suspension, or an opportunity to make representations; and
- (b) the Authority's notice of revocation or suspension is effective immediately.

(5) The revocation or suspension of a license may be rescinded by—

- (a) the Authority, on its own initiative or on an application by the financial institution; or
- (b) the High Court, on an application by the financial institution.

(6) If a financial institution applies to the High Court for a rescission of the revocation or suspension, the Authority is entitled to be heard on the application and to object to it.

(7) An application to the High Court by a financial institution under this section—

- (a) must be made within 21 days after the notification of the revocation or suspension;
- (b) does not act as a stay on the revocation or suspension, which continues to have effect, unless the court orders otherwise, until the appeal is resolved.

(8) The High Court may confirm, vary, or reverse the Authority's decision to revoke or suspend the licence.

18 Fee payable by a licensed financial institution

(1) Every licensed financial institution must pay the annual fee prescribed by regulations made under this Act.

(2) The fee must be paid on the grant of the licence (in an amount that is prorated for the remaining period of the financial year) and then on an annual basis.

Part 3

Restrictions that apply to licensed financial institutions

19 Ownership of a licensed financial institution

(1) An individual, or an individual together with the individual's relatives, may not own or control, directly or indirectly, the exercise of more than 15% of the voting share of a licensed financial institution.

(2) If the Authority is satisfied that it is consistent with the purposes of this Act, the Authority may, with approval of the Minister, direct that the limit in subsection (1)(b) be increased to a percentage not exceeding 50% in any case.

20 Licensed financial institutions may not be wound up voluntarily without approval

(1) A licensed financial institution may not be wound up voluntarily unless it has first obtained the approval of the Authority.

(2) This section applies despite the provisions of any other law.

21 Alterations, reconstructions, arrangements, and agreements

(1) If a licensed financial institution's memorandum or articles of association, or any other instrument under which the institution was incorporated, is altered, the institution must give the Authority full particulars of the alteration as soon as practicable, in writing, and verified by a statutory declaration made by a director.

(2) A licensed financial institution must not do any of the following without the prior approval of the Authority:

- (a) make any arrangement or enter into any agreement for the sale or disposal of any of its financial business by amalgamation or otherwise;
- (b) in the case of a licensed financial institution incorporated in Kiribati, make any reconstruction of its capital;
- (c) make any arrangement or enter into any agreement for the purchase or acquisition of the business of any other financial institution.

(3) Subsection (2) applies to a licensed financial institution's Kiribati operations and, for a licensed financial institution incorporated in Kiribati, also to its overseas operations.

(4) The Authority may exercise any of the powers set out in section 40(2) in relation to a financial institution if the Authority is satisfied that—

- an alteration referred to in subsection (1) alters the instrument in a manner detrimental to the institution's depositors; or
- a matter referred to in subsection (2) has taken effect without the Authority's approval.

22 Restriction on advances, credit facilities, and guarantees

(1) A licensed financial institution must not—

- provide to any person, or to any group of persons under the direct or indirect control of one person, any advance or credit facility, or give any financial guarantee or incur any other exposure or liability to that person or group with the effect that the licensed financial institution's total liability to that person or group is more than 25% of the institution's total capital;
- make any advances or provide any credit facility against the security of its own shares;
- make or permit to be outstanding unsecured advances or unsecured credit facilities of an aggregate amount in excess of 1% of the sum of the licensed financial institution's total capital, or give any financial guarantees in excess of that amount without security, or incur any other liability in excess of that amount without security—
 - to or on behalf of any of its directors (whether obtained by or on account of the director jointly or severally); or
 - to or on behalf of any company or person in which it, or any of its directors, is interested as director, partner, manager, or agent; or
 - to or on behalf of any individual, firm, partnership, or company of whom, or for whom, any of its directors is a guarantor;
- make or permit to be outstanding to an officer of the licensed financial institution unsecured advances or unsecured credit facilities that, in aggregate, exceed a year's remuneration for the officer.

(2) Subsection (1) applies to a licensed financial institution's Kiribati operations and, for a licensed financial institution that is incorporated in Kiribati, to its overseas operations also.

(3) Subsection (1)(a) does not apply to—

- transactions between financial institutions; or
- transactions between the branches of a financial institution; or

- (c) the purchase of bills of exchange or documents of title to goods, where the holder of those bills or documents is entitled to payment outside Kiribati for exports from Kiribati; or
- (d) advances made against transfers, or bills or other documents of the type described in paragraph (c).

(4) In subsection (1),—

total capital means the sum of the global consolidated issued paid-up capital and published reserves of that licensed financial institution

unsecured advances or unsecured credit facilities means advances or credit facilities made without security or made without security that is sufficient to cover the advances or credit facilities.

23 Prohibited activities

(1) A licensed financial institution must not—

- (a) engage in any business other than the business specified in its licence;
- (b) engage, whether on its own account or on a commission basis, in any business other than financial business except—
 - (i) as permitted under paragraph (d); or
 - (ii) to the extent that carrying on such business is necessary in the course of the satisfaction of debts due to the licensed financial institution (but all such interests must be disposed of within a period of time determined by the Authority);
- (c) do any of the following without the prior approval of the Authority:
 - (i) acquire a subsidiary company;
 - (ii) carry out business in any capacity via a subsidiary company; or
 - (iii) permit a subsidiary company to carry out business in any capacity;
- (d) acquire or hold, to an aggregate value exceeding 25% of that licensed financial institution's total capital, any part of the share capital of any other company, not counting any shareholding—
 - (i) that the licensed financial institution may acquire in the course of the satisfaction of debts due to it (but any such shareholding must be disposed of within a period of time specified by the Authority); or
 - (ii) approved by the Authority, in a subsidiary financial institution or in a subsidiary company formed by a licensed financial institution for the execution of nominee, executor, or trustee functions or other functions incidental to banking business; or
 - (iii) acquired or held by the institution as a trustee or nominee, or the purchase and sale of shares on the order and for the account of a customer; or

- (iv) acquired or held by the institution, or any subsidiary, of any part of the share capital of any company or companies under an underwriting or sub-underwriting contract for any period of time as approved by the Authority.
- (2) Subsection (1) applies to a licensed financial institution's Kiribati operations and, for a licensed financial institution that is incorporated in Kiribati, to its overseas operations also.
- (3) For the purposes of subsection (1)(d),—
acquired or held, in relation to a shareholding acquired or held by a financial institution, includes share capital acquired or held by any subsidiary of the institution, whether or not the subsidiary is licensed under this Act
total capital has the meaning given in section 22(4).
- (4) Except with the approval of the Authority,—
 - (a) a financial institution must not open a new branch in Kiribati; and
 - (b) a financial institution incorporated in Kiribati must not open a new branch, agency, or office in any place outside Kiribati.
- (5) Every director and every manager of a licensed financial institution that contravenes subsections (1)(a), (b), (c), or (d) or (4) is liable to a penalty—
 - (a) not exceeding \$500 for every day during which the contravention continues
 - (b) imposed by the Authority.

24 Anti-money laundering and anti-terrorist financing

Every financial institution must comply with any regulations made under this Act that relate to anti-money laundering and anti-terrorist financing.

25 Management of non-resident controlled licensed financial institution

Every non-resident controlled licensed financial institution must—

- (a) endeavour to place Kiribati citizens in management positions in its Kiribati operations; and
- (b) on request and not more than annually, present to the Authority a program of training in order to place Kiribati citizens in management positions in its Kiribati operations.

26 Retention of cheques, etc, for 7 years

- (1) This section applies to the following documents received by a licensed financial institution (whether received before, on, or after the commencement of this Act):
 - (a) cheques and bank drafts in the possession of a licensed financial institution on which they are drawn; and

- (b) bills of exchange and promissory notes in the possession of a licensed financial institution and made payable at that institution.
- (2) The licensed financial institution must keep the document for at least 7 years after,—
 - (a) in the case of documents payable on demand, the date of the document;
 - (b) in any other case, the due date of the document.
- (3) A financial institution may keep a document for the purposes of this section by keeping a copy of the document in electronic form.
- (4) A copy of a document kept under this section is admissible in evidence in any legal proceedings to the same extent that the document of which it is a copy would be admissible.

Part 4

Prudential requirements

27 Minimum capital of financial institutions

- (1) Every licensed financial institution must hold, in Kiribati, in the specified minimum amounts (or proportions in relation to its assets, liabilities, or risk exposures),—
 - (a) if incorporated in Kiribati, paid-up capital and unimpaired reserves; and
 - (b) if incorporated outside Kiribati, assigned capital and unimpaired reserves.
- (2) The Authority may specify different minimum amounts or proportions for the purpose of this section for different financial institutions or for different classes of financial institutions.
- (3) However, the minimum amount of capital and unimpaired reserves required to be held under this section must not,—
 - (a) in the case of a credit institution, be less than \$500,000;
 - (b) in the case of a bank, be less than \$2,000,000.
- (4) The method of calculating, and the form of, the capital required to be held under this section must be specified by the Authority.
- (5) A licensed financial institution must not declare or pay any dividend or make any other transfer or remittance from profits if doing so would contravene this section.

28 Required reserves of financial institutions

- (1) Every licensed financial institution must maintain the specified minimum reserves against deposits and other similar liabilities.

- (2) The Authority may specify the minimum reserves by specifying amounts, ratios, or any other method or methods of calculation and may specify different minimum reserves (or ratios or methods of calculation) to apply for different classes of deposits or liability (but the same amounts, ratios, or other method must apply to all licensed financial institutions).
- (3) For all deposits and other similar liabilities (or, for each class of deposits or liabilities for which minimum reserves are specified), a financial institution must maintain reserves in the lesser of the following amounts:
 - (a) the specified minimum reserves;
 - (b) reserves in an amount equal to 20% of the deposits and other similar liabilities (or of the class of deposits or liabilities, as the case may be).
- (4) The Authority must give at least 30 days' notice before any change in specified minimum reserves takes effect.
- (5) A licensed financial institution must maintain the required reserves by depositing them with a commercial bank licensed as a financial institution under this Act.
- (6) If a licensed financial institution fails to maintain the required reserves, the Authority may impose on the institution a penalty not exceeding 0.01% of the amount of the shortfall in the reserves per day until the required reserves are held.

29 Foreign exchange holdings

- (1) Every licensed financial institution must not exceed the specified maximum amounts—
 - (a) working balance that a financial institution may hold in foreign currencies (generally or in any specified currency) outside and within Kiribati;
 - (b) foreign currencies that a financial institution may hold outside Kiribati;
 - (c) Indebtedness in foreign currencies generally or in any specified currency that a financial institution may incur.
- (2) For the purposes of subsection (1), the Authority may specify—
 - (a) the maximum amounts by specifying a method or methods of calculating maximum amounts;
 - (b) different maximum amounts for different financial institutions or for different classes of financial institutions.
- (3) Every licensed financial institution must,—
 - (a) at the times and in the manner specified by the Authority, provide to the Authority the financial institution's foreign investment policies and guidelines; and
 - (b) consult the Authority on appropriate policies and guidelines.

30 Minimum holdings of unimpaired liquid assets

- (1) Every licensed financial institution must, in relation to its operations in Kiribati, maintain the specified minimum holding of unimpaired liquid assets.
- (2) For the purposes of this section, the Authority may specify—
 - (a) the minimum holdings of unimpaired liquid assets (which must not exceed 35% of a financial institution's deposit and other similar liabilities);
 - (b) different minimum holdings of unimpaired liquid assets for different financial institutions or for different classes of financial institution;
 - (c) the method of calculating amounts of unimpaired liquid assets held by financial institutions.
- (3) For the purposes of this section, **unimpaired liquid assets**—
 - (a) means any or all of the following:
 - (i) Australian currency; and
 - (ii) treasury bills of the Government; and
 - (iii) securities issued or guaranteed by the Government or by any statutory corporation that mature in not more than 10 years; and
 - (iv) net claims on or net balances held with other financial institutions in Kiribati other than items in the course of collection; and
 - (v) bills of exchange; and
 - (vi) any foreign exchange, in the form of currency or bank balances held abroad as the Authority approves for this purpose; and
 - (vii) any other assets or types of assets specified by the Authority; but
 - (b) does not include required reserves maintained by the financial institution under section 28.
- (4) If a licensed financial institution fails to maintain the specified minimum holding of unimpaired liquid assets, the Authority may impose on the institution a penalty not exceeding 0.01% of the amount of the shortfall in the unimpaired liquid assets per day until the required assets are held.

31 Quality of assets

- (1) Every licensed financial institution must ensure that the proportion of loans that are non-performing that are held by the institution does not exceed any specified maximum proportion.
- (2) For the purposes of this section, the Authority may specify—
 - (a) the maximum proportion of non-performing loans;
 - (b) the method for identifying and computing non-performing loans, and any related matters including the aging and provisioning requirements for non-performing loans;

(c) different proportions, methods, and related matters for different financial institutions or for different classes of financial institution.

Part 5

Reporting and auditing

32 Information to be submitted to Authority

(1) A licensed financial institution must, when required by the Authority, provide to the Authority any or all of the following—

- (a) a statement showing the assets and liabilities of the licensed financial institution;
- (b) a balance sheet;
- (c) a statement of profit and loss;
- (d) a statement of income and expenditure;
- (e) any other returns, data, or information that the Authority requires for the proper implementation of this Act.

(2) Subsection (1) applies to a licensed financial institution's Kiribati operations and, for a licensed financial institution that is incorporated in Kiribati, to its overseas operations also.

(3) Every manager and every director of or licensed financial institution that fails to comply with this section is liable to a penalty—

- (a) not exceeding \$500 for every day that the default continues; and
- (b) imposed by the Authority.

33 Publication of financial statements

(1) A licensed financial institution must,—

- (a) not later than four months after the close of each financial year,—
 - (i) publish in the Gazette its audited balance sheet and profit and loss account, in the form and manner specified by the Authority, and the full and correct names of its directors (and details of any changes to the directorships during the last financial year);
 - (ii) provide copies of the audited balance sheet and profit and loss account to the Authority;
- (b) at all times keep its most recently-published audited balance sheet and profit and loss account available for inspection in each of its offices and branches in Kiribati.

(2) Subsection (1) applies to a licensed financial institution's Kiribati operations and, for a licensed financial institution incorporated in Kiribati, also to its over- seas operations.

(3) Every director and every manager of a licensed financial institution that contravenes the provisions of this section is liable to a penalty—

- not exceeding \$10,000; and
- imposed by the Authority

34 Auditors

(1) A licensed financial institution must appoint annually one or more persons (whether as individuals or as members from time to time of any firm or firms) to be auditors of the licensed financial institution.

(2) Before appointing a person to be auditor, a licensed financial institution must obtain the Authority's approval for that person to act as an auditor.

(3) The duties of the approved auditor include making a report, a copy of which must be sent to the Authority, on the annual balance sheet and profit and loss account of the licensed financial institution and its subsidiaries in relation to the following matters:

- whether the auditor has obtained all the information and explanations that to the best of their knowledge and belief were necessary for the purposes of their audit; and
- whether, in the auditor's opinion, proper books of account have been kept by the licensed financial institution so far as appears from their examination of those books, and proper returns adequate for the purposes of their audit have been received from branches not visited by them; and
- whether, in the auditor's opinion and to the best of their information and according to the explanations given, those accounts give a true and fair view—
 - in the case of the balance sheet, of the state of the licensed financial institution's affairs as at the end of its financial year; and
 - in the case of the profit and loss accounts, of the profit or loss for its financial year; and
- in the case of a licensed financial institution submitting group accounts as required by the Authority, whether in the auditor's opinion, the group accounts have been properly prepared so as to give a true and fair view of the state of affairs and profit or loss of the licensed financial institution and its subsidiaries included in the group accounts; and
- in any case in which the auditor has called for explanation or information from the officers or agents of the licensed financial institution and its subsidiaries, whether the explanation or information given is satisfactory.

(4) In case of a licensed financial institution incorporated in Kiribati, the report of an approved auditor under subsection (3) must be tabled together with the

report of the directors of the licensed financial institution at the annual meeting of shareholders and copies of that report must be provided to the Authority.

- (5) Every director and every manager of a licensed financial institution which contravenes subsection (4) is liable to a penalty—
 - (a) not exceeding \$1,000; and
 - (b) imposed by the Authority.
- (6) If a licensed financial institution fails to appoint, or, at any time, fails to fill a vacancy for, an approved auditor, the Authority may appoint an approved auditor and may fix the remuneration to be paid by that institution to that auditor.
- (7) Subsections (1) to (3) and (6) apply to licensed financial institutions that are incorporated outside Kiribati only in relation to their Kiribati operations.

35 Requirement that information be audited

- (1) The Authority may, by notice to a licensed financial institution, require any information that a licensed financial institution is required to provide to the Authority to be audited by an approved auditor, on any terms that are specified by the Authority.
- (2) Every manager and every director of a licensed financial institution that fails to comply with subsection (1) is liable to a penalty—
 - (a) not exceeding \$1,000 for every day that the institution fails to comply; and
 - (b) imposed by the Authority.

36 Disclosure of information by auditors

- (1) A person who is or has at any time been an auditor of a licensed financial institution must disclose to the Authority any information relating to the institution and that the person has obtained in the course of holding that office, if that person considers that—
 - (a) the licensed financial institution—
 - (i) is insolvent or likely to become unable to meet its obligations or is about to suspend payment; or
 - (ii) is carrying on its business in a manner detrimental to the interests of its depositors or of its creditors; and
 - (b) the disclosure of that information is likely to assist, or be relevant to, the exercise by the Authority of its powers under this Act.
- (2) Every auditor must, before disclosing any information to the Authority under subsection (1), take reasonable steps to inform the licensed financial institution of the intention to disclose the information and the nature of the information.

- (3) No civil, criminal or disciplinary proceedings lie against any auditor arising from the disclosure in good faith of information to the Authority under subsection (1).
- (4) No tribunal, body, or authority having jurisdiction in respect of the professional conduct of any auditor may make any order against, or do any act in relation to, that person in respect of the disclosure.
- (5) No information received by the Authority under subsection (1) is admissible in evidence in any proceedings against the auditor concerned.

Part 6 Supervision by the Authority

37 Authority may impose penalties

- (1) If a provision of this Act provides that the Authority may impose a penalty on a licensed financial institution or other person for a contravention, the Authority may—
 - (a) impose a penalty in an amount that the Authority determines to be appropriate taking into account the circumstances, but not exceeding the amount referred to in the provision; and
 - (b) direct the licensed financial institution to take any action or to do any act or thing.
- (2) If the Authority proposes to impose a penalty, the Authority must give the financial institution or person notice of the proposal, and the notice must specify the grounds for the proposed penalty.
- (3) The financial institution or the person may, no later than 14 days after the notice is given, make representations to the Authority.
- (4) After taking into account any representations made under subsection (3), the Authority may—
 - (a) impose the penalty; or
 - (b) take some other action.
- (5) The Authority may levy and collect any penalty imposed under this Act.
- (6) If a penalty imposed by the Authority is not paid within the time prescribed in the regulations made under this Act, the Authority may sue for the penalty as a civil debt in a court of competent jurisdiction.

38 General penalties

- (1) This section applies if—
 - (a) a licensed financial institution or any of its officers—
 - (i) refuses to permit an examination into the affairs of the institution; or

- (ii) provides or conveys any information under this Act knowing that the information is false or misleading in a material respect; or
- (iii) contravenes any provision of this Act, any regulations made under this Act, or any order or other directive issued by the Authority; or
- (iv) commits any irregularities in the conduct of the business of the institution; or
- (v) in the opinion of the Authority, is conducting financial business in an unsafe or unsound manner; and

- (b) there is no other provision in the Act or under the regulations that specifies a penalty in respect of the conduct.

(2) For each contravention, the Authority may impose on the licensed financial institution or officer—

- (a) an initial penalty not exceeding \$5,000; and
- (b) a further penalty not exceeding \$500 for each day that the contravention continues.

39 Defence where officer prosecuted

Any officer of a financial institution who is proceeded against for a contravention incurring a penalty under this Act has a good defence to such proceeding if the officer proves that—

- (a) the contravention was committed without the officer's consent or connivance; and
- (b) the officer exercised all the due diligence to prevent the contravention that the officer ought to have exercised having regard to their position in the licensed financial institution in respect of which the contravention was committed.

40 Powers of Authority

(1) The Authority may exercise a power described in subsection (2) if the Authority has reasonable grounds to believe that a licensed financial institution or any associated person of a licensed financial institution—

- (a) is carrying on its business in a manner detrimental to the interests of its depositors or of its creditors; or
- (b) is insolvent or is likely to become unable to meet its obligations or is about to suspend payment; or
- (c) has contravened or failed to comply with any of the provisions of this Act, any directive given under this Act, or any condition attached to its licence.

(2) The powers are as follows:

- (a) to require the licensed financial institution or any associated person to do any act (or to stop doing any act) in relation to the business that the Authority considers necessary; and
- (b) to appoint a person to advise the licensed financial institution or any associated person in the proper conduct of its business, and to fix the remuneration of any person so appointed (to be paid by the licensed financial institution or the associated person); and
- (c) to appoint a person (a **Controller**) to assume control of the business of the licensed financial institution or a branch of the institution in Kiribati; and
- (d) to petition the High Court to wind up of the licensed financial institution; and
- (e) to revoke or suspend the financial institution's licence.

(3) If a power in subsection (2) is to be exercised in respect of a licensed financial institution, the power may also be exercised over associated persons of the licensed financial institution if the Authority considers that is necessary or desirable for the effective administration of the group of which the licensed financial institution is a part.

(4) The Authority may exercise the power in subsection (2)(c) only with the consent of the Minister.

(5) If the Authority exercises the power in subsection (2)(c), the Authority must serve on the financial institution a notice that details the assumption of control over the financial institution, including the date and time from which the controllership takes effect.

(6) The Authority must publish a copy of the notice under subsection (5) in the Gazette at soon as practicable after serving it on the financial institution.

41 Investigation of licensed financial institutions

- (1) The Authority may, at any time, investigate the books, accounts, and transactions of any licensed financial institution.
- (2) The Authority may initiate an investigation without notice if the Authority considers that is reasonably necessary in the circumstances.
- (3) The Authority may require a licensed financial institution to supply the Authority with a report, prepared by an auditor or other person approved or appointed by the Authority, into any matter relating to the business of the institution (including, for example, its liquidity, solvency, compliance with statutory provisions, accounting systems, or internal controls).
- (4) The Authority must investigate the books, accounts, and transactions of a licensed financial institution—
 - (a) if it has reason to believe that the licensed financial institution—

- (i) is carrying on its business in a manner detrimental to the interests of its depositors or of its creditors; or
- (ii) is insolvent or is likely to become unable to meet its obligations or is about to suspend payments; or
- (iii) has contravened or failed to comply with, or may contravene or fail to comply with, any of the provisions of this Act or any condition attached to its licence;

(b) if shareholders of the licensed financial institution (holding not less than one-third of the total number of issued shares of the institution) or depositors (holding not less than one-half of the gross amount of the total deposit liabilities in Kiribati of the institution) apply to the Authority to initiate an investigation and—

- (i) submit to the Authority any evidence that the Authority may require to justify the investigation; and
- (ii) provide security for the payment of the costs of the investigation as the Authority may require; or

(c) if a licensed financial institution suspends payment or informs the Authority of its intention to do so.

(5) After the conclusion of an investigation, the Authority must forward a copy of its report to the head office of the licensed financial institution.

(6) The Authority may direct that the expenses incurred by or incidental to an investigation under this section be paid (in whole or in part)—

- (a) by the licensed financial institution investigated;
- (b) in the case of an investigation initiated under subsection (2)(b),—
 - (i) wholly by the applicants; or
 - (ii) partly by the applicants and partly by the licensed financial institution in such proportions as the Authority considers just.

42 Authority may disqualify officers immediately in some circumstances

(1) The Authority may, by notice to a person and with immediate effect, disqualify a person from acting or continuing to act as an officer of a licensed financial institution or its subsidiaries if the Authority considers that—

- (a) any of section 8(a) to (c) applies to the person; or
- (b) the person, being a manager of a licensed financial institution, has been involved in a breach of section 23(1).

(2) A person who is disqualified under this section and who continues, or purports to continue, in the role from which they are disqualified, is liable to a penalty—

- (a) not exceeding \$1,000 for each day that the contravention continues; and
- (b) imposed by the Authority.

43 Authority may review whether managers and directors are fit and proper

(1) The Authority may review whether a manager or director of a licensed financial institution (or a person proposed for one of those roles) is a fit and proper person for that role.

(2) If the Authority considers that section 8(d) or (e) applies to the manager or director, the Authority may disqualify that person from the role.

(3) If the Authority proposes to disqualify a person under subsection (2), the Authority must give the licensed financial institution and the person notice of the proposal, and the notice must specify the grounds for the proposed disqualification.

(4) The licensed financial institution and the person may, no later than 14 days after the notice is given, make representations to the Authority.

(5) After taking into account any representations made under subsection (4), the Authority may—

- (a) confirm the disqualification (in which case it takes effect and the person must step down from the role); or
- (b) set aside the proposed disqualification; or
- (c) take some other action.

(6) Any person who is disqualified under this section and who continues, or purports to continue in the role from which they are disqualified, is liable to a penalty—

- (a) not exceeding \$1,000 for each day that the contravention continues; and
- (b) imposed by the Authority.

44 Authority's power to investigate unlicensed financial business

(1) If the Authority has reason to believe that a person is carrying on financial business without a licence, the Authority may investigate the books, records, and other documents of the person.

(2) The Authority may do either of the following that the Authority considers is necessary to conduct the investigation—

- (a) interview the person believed to be carrying on financial business or that person's agents (and, for that purpose, administer oaths), and
- (b) compel the person to present or produce books, records, and other documents.

(3) Any person who fails or refuses to present or produce books, records, or other documents when compelled to do so under this section is guilty of an offence and liable to a fine not exceeding \$500 for each day the contravention continues, from the day the person first began carrying on the financial business without a licence.

45 Disclosure of acquired knowledge

(1) A person who acquires knowledge in their capacity as an officer or agent of any licensed financial institution, or when exercising any function or performing any duty under this Act, must not disclose to any person any information in respect of a customer of that licensed financial institution except—

- (a) with the written authorisation of the customer or of the customer's legal personal representative; or
- (b) for the purpose of performing the officer or agent's duties under this Act; or
- (c) in the course of any prosecution for an offence; or
- (d) in the course of any winding up of a licensed financial institution by the High Court; or
- (e) when lawfully required to do so.

(2) Subsection (1) does not prevent a licensed financial institution from providing to a person, in response to a legitimate business request, a general credit rating of another person.

(3) If a licensed financial institution provides a general credit rating of a person (A), the licensed financial institution must provide a copy of the credit report to A, if A requests a copy.

(4) Except in the performance by an officer or agent of a licensed financial institution of their duties under this Act, the officer or agent must maintain confidentiality in respect of all matters relating to the affairs of the institution and of any clients of the institution that come to the officer or agent's knowledge in the performance of their duties.

(5) Before starting as an officer or agent of a licensed financial institution, the officer or agent must sign a declaration pledging to comply with this section.

(6) Any person who contravenes subsection (1), (4), or (5) is liable to a penalty—

- (a) not exceeding \$2,000; and
- (b) imposed by the Authority.

Part 7
Control over licensed financial institutions**46 Application of this Part**

(1) (a). This Part applies if the Authority appoints a Controller to assume control of the business of a licensed financial institution (or of a branch of the licensed financial institution in Kiribati) under section 40(2)(c).

(b). The qualification of a controller includes, but are not limited to the following;

- (i). knowledge of accounts
- (ii). Financial matters

(iii). Risk management

(2) If the Authority assume controllership of a licensed financial institution,—

- (a) any provisions in this Part providing for approval by the Authority, direction to the Controller by the Authority, consulting with the Authority, or providing things to the Authority have no application; and
- (b) any references in this Part to the Controller must be treated as references to the Authority (subject to paragraph (a) and to any other necessary modifications).

47 Control of licensed financial institutions by Controller

- (1) The Controller may carry on all or any part of the business of the licensed financial institution subject to controllership and has, and may exercise in relation to the business, all powers, rights, and authorities as may be necessary to carry on the business.
- (2) For the purposes of carrying on the business, the Controller may—
 - (a) pay, in whole or in part, any creditor or class of creditors of the licensed financial institution;
 - (b) make any compromise or arrangement with any creditor, or person claiming to be a creditor, of the licensed financial institution;
 - (c) compromise all calls, debts, and claims subsisting, or claimed to subsist, between the licensed financial institution and any other person, and all questions relating to the assets of the licensed financial institution, and give a complete or partial discharge.
- (3) The Controller has all the powers, rights, and authorities that are necessary for the purposes of the controllership, including but not limited to—
 - (a) all the powers, rights, and privileges that the licensed financial institution has under any contract or otherwise;
 - (b) in the case of a body corporate, all the powers of the members in general meeting and the Board of Directors of that body corporate.
- (4) The management of the licensed financial institution subject to controllership vests in the Controller on and after the date specified in the notice under section 40(5).
- (5) If a licensed financial institution is placed under control, it is not lawful or competent for any person to engage in the management or conduct of its business, or to act on behalf of the licensed financial institution in any capacity, except as, and to the extent, permitted by the Controller.
- (6) If an associated person of a licensed financial institution becomes subject to controllership, all references in Part to a licensed financial institution must be read as references to that associated person.
- (7) If a licensed financial institution and one or more of its associated persons are placed under control, the assets of the licensed financial institution and of the

associated person or persons are available, at the discretion of the Controller, to discharge the debts and obligations of any of them.

(8) In all matters relating to the controllership, the Controller occupies the position of agent in relation to the licensed financial institution and any associated persons.

48 Expenses of Controller

(1) Any costs, charges, and expenses properly incurred by the Controller in performing their functions and exercising their powers as Controller (including remuneration) are payable out of the property of the licensed financial institution in priority to all other claims.

(2) The Authority may—

- determine the Controller's remuneration;
- determine any requirements or process for incurring, approving, and disclosing costs, charges, and expenses;
- advance any amounts required for the controllership of the institution (and if it does, the Authority assumes, in respect of those amounts, the priority described in subsection (1)).

49 Duty to deliver books and property to Controller

(1) A person who has possession or control of any book, record, document, or other property belonging to a licensed financial institution that is subject to controllership must, as soon as practicable after the institution is placed under control, provide the property to the Controller.

(2) Subsection (1) applies whether or not the person in possession or control of any property is, or was, a trustee of the property for the licensed financial institution or entitled to a lien or other charge over the property, or was a receiver or manager of the property.

(3) A person who fails to comply with subsection (1) within 7 days after the notice referred to in section 40(5) is served is liable to the following penalties imposed by the Authority:

- an initial penalty not exceeding \$5,000; and
- a further penalty not exceeding \$500 for every further day that the failure to comply continues.

50 Offence to destroy, alter, or conceal records

(1) A person is guilty of an offence and liable to a fine not exceeding \$30,000 if the person—

- with intent to defeat the purposes of this Part, destroys, alters, or conceals any book, document, or record of, or relating to, a licensed financial institution that is subject to controllership or sends or attempts to send out of Kiribati any such book, document, or record; or
- fails or refuses to answer, to the best of that person's knowledge and ability, any question that that person may be asked by the Controller in

relation to any such book, or document, or record, or any property, or willfully gives a false answer to that question.

(2) In any prosecution for an offence alleged to have been committed under subsection (1), if it is proved that the person charged with the offence has destroyed, altered, or concealed, or has sent, or has attempted to send, out of Kiribati, any book, document, or record, the onus of proving that the person has not done so in contravention of subsection (1) lies on that person.

51 Termination of controllership

(1) The Minister may, on the advice of the Authority, order that any licensed financial institution or any associated person subject to controllership cease to be subject to controllership.

(2) A licensed financial institution or associated person ceases to be subject to controllership if a winding up order is made in respect of the licensed financial institution or associated person on the petition of the Controller.

(3) If a licensed financial institution or associated person ceases to be subject to controllership as a consequence of an order under subsection (1) or (2),—

- (a) that licensed financial institution or associated person ceases to be subject to controllership on the date specified in the order; and
- (b) the appointment of the Controller in respect of that licensed financial institution or associated person terminates on the date specified in the order.

(4) If a licensed financial institution or associated person ceases to be subject to controllership, the Authority must publish a notice in the Gazette accordingly.

52 Termination of appointment of Controller

(1) The Authority may terminate the appointment of the Controller—

- (a) for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Authority;
- (b) if the Authority is satisfied that the termination would be in the interests of the effective conduct of the affairs of the licensed financial institution subject to controllership or in the interests of maintaining confidence in the soundness of the financial system.

(2) A Controller may resign by notice in writing to the Authority.

(3) If the appointment of a Controller is terminated or a Controller resigns or dies, the Authority may appoint a replacement.

53 Controller to comply with directions of Authority

(1) A Controller of a licensed financial institution must comply with any directions given in writing by the Authority relating to the exercise of the powers of that Controller under this Part.

(2) The Authority may make regulations not inconsistent with this Act providing for further powers, functions, and authority of the Controller.

54 Considerations affecting exercise of powers by Controller

(1) In exercising the powers conferred by this part of this Act, the Controller of a licensed financial institution must have regard to—

- (a) the purposes of this Act; and
- (b) to the extent consistent with paragraph (a), the need to resolve as quickly as possible the difficulties of that institution; and
- (c) to the extent consistent with paragraphs (a) and (b), the need to preserve the position of creditors and maintain the ranking of claims of creditors; and
- (d) the advice of the Authority.

(2) Subsection (1) is subject to section 53 (and to any regulations made under that section).

(3) Every Controller must—

- (a) consult the Authority, to the extent required by the Authority, about the exercise of the Controller's powers; and
- (b) provide any reports that the Authority requires about the state of the affairs and business of the licensed financial institution.

55 Moratorium on enforcement against financial institution

(1) While a financial institution is subject to controllership, no person may—

- (a) commence or continue any action or other proceedings, including proceedings by way of counterclaim, against the financial institution; or
- (b) issue any execution, attach any debt, or otherwise enforce or seek to endorse any judgment or order obtained in respect of the financial institution; or
- (c) petition or resolve to wind up the financial institution; or
- (d) foreclose, enter into possession of, sell, or appoint a receiver of the property of that licensed financial institution or property in respect of which the financial institution has an equity of redemption; or
- (e) exercise or continue any power or rights under any mortgage, charge, debenture, instrument, or other security over the property of the financial institution; or
- (f) claim or recover, under any retention of title clause, hire purchase agreement, mortgage, lease, or security, any property in the possession of the financial institution; or

- (g) determine or forfeit any tenancy, distrain for rent, retake or re-enter any premises, or exercise or continue any power or rights under any lease, against the financial institution; or
- (h) exercise any right of set-off acquired prior to the financial institution becoming subject to controllership.

(2) Despite subsection (1),—

- (a) a person may commence or continue an action or proceeding against the financial institution for the purpose of determining whether any right or liability exists (but only if the Controller or the High Court has given their leave); and
- (b) the Controller may allow a creditor or a depositor (or a class of creditors or depositors) to take any action described in subsection (1), except for the action described in subsection (1)(c), in respect of the whole or part of any claim of, or security held by, the creditor or depositor (or by the class of creditors or depositors).

(3) Subsection (1) does not affect the existence of any security over the property of the financial institution or its priority over other debts (subject to the other provisions of this Act).

(4) Despite subsection (1)(a) and (b), a person may take the steps described in those paragraphs in respect of any contract that is entered into, or any obligation that is incurred, by the financial institution after the date on which the financial institution became subject to controllership.

(5) Despite this section, the Authority may direct the Controller to approve and authorise the making and carrying out of any financial arrangement between the financial institution in controllership and any other person that, in the opinion of the Authority, is necessary having regard to the considerations set out in section 54(1)(a) to (c).

56 Sale of whole or part of financial institution or its business

(1) The Controller of a licensed financial institution—

- (a) sell or otherwise dispose of the whole or any part of the business undertaking of the institution to any person and on any terms and conditions that the controller thinks fit; and
- (b) for that purpose—
 - (i) form and register a new body corporate;
 - (ii) transfer to new body corporate the whole or any part of the business undertaking;
 - (iii) sell some or all of the body corporate's shares or the whole or part of the business undertaking.

(2) Unless the Authority, with the consent of the Minister, has given approval, the Controller must not sell or otherwise dispose of—

- (a) the whole or any substantial part of the business undertaking of a licensed financial institution under subsection (1); and
- (b) any of the shares of any body corporate formed and registered for the purpose of subsection (1); and
- (c) the whole or any substantial part of the business undertaking transferred to a body corporate formed and registered for the purposes of subsection (1).

(3) This section does not limit any other provision of this Part.

57 Consents not required under other Acts

The provisions of any enactment or agreement requiring any consent, licence, permission, clearance, or other authority do not apply in respect of a sale or disposition to which the Authority has, with the consent of the Minister, given its approval under section 56(2).

58 Sale of property or assets subject to security

- (1) A Controller may sell or otherwise dispose of any property or assets under section 56 despite the existence, or the term and conditions, of any security over the property or those assets in favour of any other person.
- (2) If the Controller sells or otherwise disposes of any property that is or assets that are subject to any security, the property or assets remain subject to that security.

59 Proof of authority for transactions

The presentation of an instrument transferring or otherwise disposing of any property, assets, or shares that contains a recital that the transfer or other disposition is made under section 56 is, in the absence of evidence to the contrary, sufficient proof that the transfer or other disposition is made under the authority of that section.

60 Appointment of auditors

- (1) The Controller of a licensed financial institution must appoint one or more persons (whether as individuals or as the members from time to time of any firm or firms), approved by the Authority, to be auditors of the controllership of the licensed financial institution.
- (2) Before appointing a person to be auditor, the Controller must obtain the Authority's approval for that person to act as an auditor.

61 Annual report by Controller

- (1) The Controller of a licensed financial institution must, after the end of each financial year, prepare the annual accounts and a report on the conduct of the controllership and the affairs of the licensed financial institution and its associated persons subject to controllership.

- (2) The report, together with the accounts and the auditor's report on them, must be provided to the Minister and to the Authority within 7 days after completion of the auditor's report.
- (3) The report, accounts, and the auditor's report on them must, within 14 days after submission to the Minister, be filed with the Registrar of Companies.

Part 8

Miscellaneous

62 Assets of licensed financial institutions

- (1) Subsection (2) applies to—
 - (a) any licensed financial institution that becomes unable to meet its obligations or that suspends payment; and
 - (b) any licensed financial institution incorporated outside Kiribati in the event of its liquidation, bankruptcy or dissolution in its country of incorporation for whatever reason.
- (2) The assets of the licensed financial institution in Kiribati must be made available to meet the licensed financial institution's deposit liabilities and claims of creditors in Kiribati in priority to all other liabilities of the licensed financial institution
- (3) The Authority is empowered to take steps to protect and preserve the priority described in subsection (2).

63 Restriction on using “bank”, “saving”, and derivatives

- (1) Except as provided in subsection (2), no person may—
 - (a) use the word “bank” or “saving” or any of their derivatives in any language in the description or title under which that person is carrying on business in Kiribati; or
 - (b) apply to incorporate or register a company in Kiribati that uses the word “bank” or “saving” or any of their derivatives in any language in the name or description of the company or person; or
 - (c) make any such representation in any document or advertisement or in any other manner.
- (2) Subsection (1) does not apply—
 - (a) to a licensed financial institution;
 - (b) to an association of banks or bank employees, formed for the protection of their common interests;
 - (c) if the Authority has given permission for the use or representation in the following cases:
 - (i) to any person (incorporated or not) that is—

- (A) formed or registered in any country other than Kiribati under a name or title that includes the word “bank” or any of its derivatives; and
- (B) authorised by the Authority to use that name or title or its derivatives in connection with the establishment or operation of a representative office in Kiribati:
 - (ii) any subsidiary of a licensed financial institution that is authorised by the Authority to use the title “bank” or any of its derivatives;
 - (iii) in the case of subsection (1)(b) only, to any person that has notified the Authority of an intention to apply under this Act for a license for the company.

(3) If a person contravenes subsection (1), the Authority may after consultation with the Minister, and after giving the person an opportunity to state its case, direct any person to desist from the use or representation.

(4) If a financial institution contravenes section 23(1), the Authority may after consultation with the Minister, direct the financial institution to desist from the use or representation.

(5) If a person has registered or incorporated a company that uses the specified words in the company’s title or description, and fails to comply with a direction under subsection (3) or (4) to desist from that use within a reasonable time, the Authority may direct the Registrar of Companies to delete the specified words from the Register of Companies (despite any prescribed provision in the Companies Act 2021 or other law to the contrary).

(6) A person who contravenes subsection (1) or fails to comply with a direction under subsection (3) or (4) is guilty of an offence and liable to a fine not exceeding \$500 for each day that the contravention or failure to comply continues.

64 Unclaimed money

(1) This section applies to any accounts payable by a financial institution to a creditor in Kiribati if, for 10 years,—

- (a) no transaction has taken place; and
- (b) no statement of account has been requested or acknowledged by the creditor.

(2) A licensed financial institution must, within 60 days after the end of each financial year, publish in the Gazette a statement of the accounts payable that invites the creditor or the creditor’s legal personal representative to submit a claim to the licensed financial institution within three months after the date of publication in the Gazette.

(3) If an amount included in the statement published under subsection (2) remains unclaimed for a period of three months after the statement is published,

the amount must be paid to the Authority and then paid into general revenue.

(4) Subject to subsection (5), a licensed financial institution is, on payment to the Authority of any amount due under this section, discharged from further liability in respect of that amount.

(5) If money that has been paid to the Authority under this section is subsequently claimed by a creditor, and the Minister is satisfied that the creditor's claim is genuine, the unclaimed money must be paid from general revenue to the licensed financial institution, which must then promptly pay the money to the creditor.

65 Confidentiality of information acquired by officer of Authority

(1) An officer of the Authority must not publish or disclose to any person any information relating to the affairs of any licensed financial institution or other person that the officer has acquired in the performance of the officer's duties under this Act or that relates to the exercise or possible exercise of powers conferred by this Act, except—

- (a) for the purpose of the performance of the officer's duties or the exercise of the officer's functions; or
- (b) when lawfully required to do so by any court, or in connection with any proceedings for an offence against this Act; or
- (c) with the consent of the person to whom the information relates; or
- (d) to the extent that the information is available under any other Act or in a public document; or
- (e) in aggregated or summary form, in such a manner as to prevent any information disclosed from being identified by any person as relating to a particular person; or
- (f) in confidence to a supervisory authority in any other country for the purpose of the exercising of functions corresponding to or similar to those conferred on the Authority under this Act.

(2) A person to whom any information is disclosed under subsection (1) must not disclose or use such information except—

- (a) in accordance with such conditions as may be specified by the Authority; or
- (b) as is necessary or desirable in connection with the exercise of any function or power conferred by law.

(3) A person who contravenes this section is guilty of an offence under this Act and is liable to a fine not exceeding \$20,000.

66 Immunity from liability

The following are not liable for anything done or omitted to be done in good faith in the discharge or purported discharge of the functions and duties of the Authority under this Act:

- (a) the Authority; or
- (b) any officer of the Authority; or
- (c) any person acting as an officer of the Authority; or
- (d) any person authorised to assist the Authority.

67 Form of directives, specifications, notices, etc

If a provision in this Act enables or requires the Authority—

- (a) to approve or give notice of any matter, the Authority must approve or give notice of the matter in writing; or
- (b) to direct or specify any matter, the Authority must notify the matter—
 - (i) in writing directly to each licensed financial institution to which the matter applies; and
 - (ii) in the Gazette.

68 Regulations

- (1) The Authority may, with the approval of the Minister, make regulations in accordance with the provisions of this Act. In making these regulations, the Authority must consult the financial institutions.
- (2) Regulations prescribing fees may—
 - (a) prescribe different fees for different classes of licensed financial institution; and
 - (b) set fees at a level that takes into account the expected costs of the Authority in exercising its powers under this Act.

69 Nominations

- (1) The Authority may make regulations providing for the nomination of accounts (being the nomination by a person, A, under any enactment of any other person, B, so that any amount standing to the credit of A in an account at the time of A's death is paid to B).
- (2) Without limiting subsection (1), the regulations may provide for any or all of the following matters:
 - (a) the treatment or application of a nomination in the administration of a deceased person's estate (for example, whether they are treated the same or differently than any other legacy);
 - (b) a maximum amount (or a maximum amount in aggregate) to apply for nominations;
 - (c) the making and revocation of nominations.

70 Authority may grant exemptions

- (1) The Authority may, with the Minister's approval, exempt any financial institution or class of financial institution from compliance with any provision or provisions of Parts 4 to 10 or of the regulations.
- (2) The Authority may grant an exemption only if satisfied that—
 - (a) granting the exemption is consistent with the purpose of this Act (or, in the case of a statutory corporation, consistent with the purpose of the law establishing the statutory corporation); and
 - (b) the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
- (3) An exemption granted under this section must specify the nature, extent, and duration of the exemption, and any of its conditions.
- (4) The Authority may amend or revoke (in whole or part) an exemption made under this section.
- (5) The breach of a term or condition of an exemption is a breach of the provision to which the exemption relates (unless the terms of the exemption otherwise provide).
- (6) An exemption granted by the Authority (or any amendment or revocation) under this section must be published in the Gazette.

71 Modification of application of this Act

The Minister may, on the recommendation of the Authority make regulations modifying—

- (a) the application of this Act in relation to a financial institution or class of financial institutions that—
 - (i) is a licensed money lender; or
 - (ii) may be required to be licensed under that Act;
- (b) the application of this Act in relation to a financial institution or class of financial institution that is also a State-owned enterprise.

72 Consequential Amendments

Section 9 (1) of the Moneylenders Act 1988 is hereby amended to insert a new subsection (e) for grounds of refusing a license as follows;

“satisfactory evidence has been produced that the applicant has not been approved by the Authority established under the Financial Supervisory Authority of Kiribati Act 2021, to carry out financial business providing loans to the public.”

Schedule Financial institutions

- 1 Kiribati Provident Fund
- 2 Development Bank of Kiribati
- 3 ANZ Bank (Kiribati) Limited
- 4 Kiribati Insurance Corporation
- 5 Western Union
- 6 Every registered credit union
- 7 Every licensed moneylender

Kiribati Financial Institutions Act 2021

Explanatory Memorandum

This Act establishes the prudential supervision of the financial institutions in Kiribati. The main purposes of the Act are to safeguard the monies of savers, depositors, investors, superannuants, and insurers. Given the size of the financial system in Kiribati, this Act covers all the financial institutions. The provisions of the Act have been drafted so they are relevant to all types of financial activities.

General policy statement

The general policy implemented by this Act is to—

- maintain the quality of governance of licensed financial institutions in Kiribati;
- protect the soundness of the financial system in Kiribati;
- minimise the detriment for the interests of depositors and creditors of financial institutions.

Part 1 of the Act provides for preliminary matters including the title and commencement. It also provides that in the case of conflict with other Acts, this Act will prevail.

Part 2 of the Act provides for the licensing of financial institutions. It requires that all financial institutions must be licensed. This is one of the major purposes of the Act. It sets out the procedures for application for licenses and conditions of licenses. All existing financial institutions will be deemed to be licensed. If they are not in compliance with the licensing requirements under this Act, they are given 6 months to comply.

Part 3 of the Act defines the restrictions that apply for licensed financial institutions. It defines prohibited activities and restrictions on advances to directors and associated companies. This Part also covers Anti Money Laundering.

Part 4 of the Act sets out the prudential requirements that financial institutions need to meet. These requirements are aimed at monitoring financial risks that financial institutions face like credit risk (quality of their loans), liquidity risks (having enough cash) and exchange rate risks.

Part 5 of the Act sets out the reporting and disclosure requirements of financial institutions. It includes the auditing and publication of their financial accounts.

Part 6 of the Act provides for the supervision of the financial institutions by the new Financial Supervisory Authority of Kiribati (FSAK). It gives the Authority the power to impose penalties, to request for information and to investigate the Financial Institutions.

Part 7 of the Act provides for the appointment of a controller by the new Authority to take control of financial institutions which are in financial difficulties. The Process of appointment of Auditors of a Financial Institutions under controllership are also laid out. Furthermore, the appointment of a controllership is an important safeguard to prevent financial institutions from failing. The controller is not the same as the liquidator. The

controller is appointed very early to prevent the company from liquidation.

Part 8 deals with miscellaneous including confidentiality of information and the powers to make regulations and directives. This part also give room for Minister to modify the necessary application of this Act to other relevant Acts where applicable but not yet covered. Finally, the last part of the Act makes consequential amendments to section 9(1) of the Moneylenders Act to insert a new ground that before the Registrar issued licenses to moneylenders/applicants under the Moneylenders Act 1988, the approval of the Financial Supervisory Authority of Kiribati is required to show that the applicant is approved to operate a financial business of providing loans to the public.

Dr. Teuea Toatu
Hon. Vice President and Minister for Finance and Economic Development

LEGAL REPORT

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

Tetiro Maate Semilotu

Attorney General

**CERTIFICATE OF THE CLERK OF THE MANEABA NI
MAUNGATABU**

This printed impression of the Kiribati Financial Institutions Act 2021 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 2nd December 2021 and is found by me to be a true and correctly printed copy of the said Bill.

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Eni Tekanene
Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this ... 21 ... day of December 2021.

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Eni Tekanene
Clerk of the Maneaba ni Maungatabu