

REPUBLIC OF KIRIBATI
(No. 1 of 1998)

I assent

Beretitenti
Assented: 9th July 1998

ACT TO REGULATE TRADE UNIONS AND EMPLOYER ORGANISATIONS

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

PART I
PRELIMINARY

Short Title

1. This Act may be cited as the Trade Unions and Employer Organisations Act 1998.

Interpretation

2. In this Act unless the context otherwise requires –

“employer” includes the Government;

“employer organisation” means an organisation representative of employers registered under this Act the principal purpose of which is under its constitution the protection and promotion of employers’ interests in matters relating to their business; and

“trade union” means an organisation representative of workers registered under this Act the principal purpose of which is under its constitution the protection and promotion of workers’ interests in matters relating to their employment;

“registered” means registered under this Act;

“the Registrar” means the Registrar of Trade Unions appointed pursuant to section 6;

“worker” means any person other than a police officer who has entered into or works under a contract with an employer, whether the contract be by way of manual labour, clerical work or otherwise, be expressed or implied, oral or in writing, and whether it be a contract of service or apprenticeship or a contract personally to execute any work or labour.

PART II
TRADE UNIONS AND EMPLOYER ORGANISATIONS

Unions and employer organisations not criminal

3. The purpose of any Trade Union or Employer organisation shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such trade or employer organisation liable to criminal prosecution for conspiracy or otherwise.

Trade Union or Employer Organisation not unlawful for civil purposes

4. The purposes of any trade union or employer organisation shall not, by reason merely that they are in restraint of trade, be unlawful so as to render voidable any agreement or trust.

Unregistered Trade Unions and Employer Organisations

5. (1) No trade union or employer organisation or any member thereof shall perform any act in furtherance of the purposes for which it has been formed unless such trade union or employer organisation has first been registered.

(2) Any trade union or employer organisation or any officer or member thereof who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine of \$1000 or to a term of imprisonment not exceeding 2 years.

Registrar of trade unions and employer organisations

6. Subject to section 99 of the Constitution the Minister may appoint a Registrar of Trade Unions and employer organizations.

Registration of trade unions and employer organisations

7. (1) Subject to subsection (2) any 7 or more members of a trade union or employer organization may, by subscribing their names to the rules of the union or organization and otherwise complying with the provisions of this Act with respect to registration, register such trade union or employer organisation under this Act.

(2) If any one of the purposes of such trade union or employer organisation is unlawful such registration shall be void.

Compulsory registration

8. (1) Every trade union or employer organisation shall be registered in accordance with the provisions of this Act or be dissolved within 3 months of the date –

- (a) of its formation; or
- (b) of any notification by the Registrar that he has refused under section 10 to register the trade union or employer organisation; or

- (c) of the commencement of this Act which ever is the later date.

(2) Every trade union or employer organisation which is not registered or dissolved within the period prescribed in the preceding subsection and every officer thereof shall be liable to a fine of \$20 for every day it remains unregistered after the expiration of such period.

Rules for registration

9. With respect to the registration under this Act of a trade union or employer organisation, and of the rules thereof, the following provisions shall apply –

- (a) an application to register the trade union or employer organisation shall be sent to the Registrar with copies of the rules and a list of the titles and names of the officers of the trade union or employer organisation,
- (b) the Registrar upon being satisfied that the trade union or employer organisation has complied with the rules respecting registry in force under this Act shall, subject to the provisions of section 10, register the trade union or employer organisation and its rules;
- (c) no trade union or employer organisation shall be registered under a name identical with that by which any other existing trade union or employer organisation has been registered or so nearly resembling such name as to be likely to deceive the members of the public; and
- (d) the Registrar upon registering a trade union or employer organisation shall issue a certificate of registration.

Refusal of registration

10. (1) If the Registrar is satisfied that –

- (a) the applicants have not been duly authorised to apply for registration; or
- (b) the purposes of the trade union or employer organisation are unlawful, or
- (c) the application is not in conformity with the provisions of this Act; he may refuse registration.

(2) When the Registrar refuses to register a trade union or employer organisation, he shall notify the applicants in writing of the grounds of such refusal and the trade union or the employer organisation shall be deemed to be dissolved, but such dissolution shall not take effect prior subject to subsection (4) to the expiry of the period limited by section 13(1) for the bringing of an appeal and then –

- (a) if no appeal is brought under the said subsection within that period, the dissolution shall take effect at the commencement of the day following the day on which that period expired, or

- (b) if an appeal is brought within that period, the dissolution shall not take effect prior to the determination of the appeal, but, if the appeal is dismissed, shall take effect within 1 month of the determination thereof.

(3) If any trade union or employer organisation the dissolution of which is required by subsection (2) be not dissolved within the time allowed, then the trade union or employer organisation and every officer thereof and any person acting or purporting to act as an officer thereof and subject to subsection (4) commits an offence and shall be liable upon conviction to a fine not exceeding \$1000 and in the case of a continuing offence to a fine of \$20 for each day during which the offence continues.

(4) No offence is committed by any person if such person acts on behalf of such a trade union or employer organisation for the purpose of –

- (a) any proceedings brought by or against such trade union or employer organisation; or
- (b) dissolving such trade union or employer organisation and disposing of its funds in accordance with its constitution and rules.

Cancellation of registration

11. (1) The Registrar may by order cancel the registration of any trade union or employer organisation –

- (a) at the request of the trade union or employer organisation to be evidenced in such manner as he may direct;
- (b) on proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that such trade union or employer organisation has wilfully, and after notice from the Registrar, violated any of the provisions of this Act or has ceased to exist.

(2) Not less than 2 months' previous notice in writing specifying briefly the grounds of the proposed cancellation, except where cancellation is required by the trade union or employer organisation of the trade union or employer organisation has ceased to exist in which case notice of cancellation may be given forthwith, shall be given by the Registrar to the trade union or employer organisation before such cancellation is effected.

(3) A trade union or employer organisation served with a notice under subsection (2) may, at any time within a period of 2 months from the date of such notice, show cause in writing against the proposal to cancel such registration; and

(4) Where cause is shown under subsection (3) the Registrar may hold such enquiry as he may consider necessary in the circumstances.

(5) The Registrar may by order after the period of 2 months specified in subsection (3), cancel the registration of any trade union or employer organisation which has failed to show cause under that subsection or which, having so shown cause, has failed to satisfy him that its registration should not be cancelled.

(6) An order made by the Registrar under this section cancelling the registration of any trade union or employer organisation shall be dated as of the date on which it was made and shall specify the grounds for the cancellation of the registration and shall forthwith be served on the trade union or employer organisation affected thereby.

Effect of cancellation of registration

12. (1) Subject to subsection (2), a trade union or employer organisation the registration of which has been cancelled under this Act shall in addition to any other liability –

- (a) cease to enjoy any of the rights, immunities or privileges of a registered trade union or employer organisation but without prejudice to any liability incurred by the trade union or employer organisation which may be enforced against the trade union or employer organisation or its assets, whether such liability is incurred before, on or after the date of the cancellation of registration; and
- (b) fort rules of the trade union or employer organisation and no person shall, except for the purpose of defending proceedings against the trade unions or employer organisation or of dissolving it and disposing of its funds in accordance with the rules thereof, take hwith be dissolved and its funds shall be disposed of in accordance with the any part in its management or organisation or act or purport to act on behalf of the trade union or employer organisation or as an officer thereof.

(2) Where the registration of a trade union or employer organisation is cancelled, the cancellation shall not take effect for the purposes of subsection (1) prior to the expiry of the period limited by section 13(1) for the bringing of an appeal and then –

- (a) if no appeal is brought under the said subsection within that period, the cancellation shall take effect for those purposes at the commencement of the day following the day on which that period expired; or
- (b) if an appeal is so brought within that period, the cancellation shall not take effect prior to the determination of the appeal, but, if the appeal is dismissed, shall take effect for those purposes, on the determination thereof.

(3) Any officer or person acting or purporting to act as an officer of a trade union or employer organisation who contravenes the provisions of subsection (1)(b) commits an offence and shall be liable on conviction to a fine not exceeding \$1000 and in the case of continuing offence to a fine of \$20 for each day during which the offence continues.

Appeals from decisions of Registrar

13. (1) Any person aggrieved by the refusal of the Registrar under section 10 to register a trade union or employer organisation or by an order by the Registrar under section 11 cancelling the registration of any trade union or employer organisation may within 1 month of the date of such refusal or such order, as the case may be, appeal against such refusal or order to the High Court and upon such appeal the said Court may order as it thinks proper, including any directions as to the costs of the appeal and any such order shall be final and conclusive and shall not be subject to any appeal.

(2) Subject to section 97 of the Constitution the Chief Justice may make rules of court governing such appeals, providing for the method of giving evidence, prescribing the fees to be paid, the procedure to be followed and the manner of notifying the Registrar of the High Court of the appeal.

(3) The Registrar shall be entitled to be heard and to be represented by the Attorney General on any appeal under this section.

Accounts of trade unions and employer organisations to be prepared and audited

14. (1) Every treasurer or other officer of a registered Trade Union or Employer Organisation shall at such times that are stated by the rules of that union or organisation present to members at a meeting of the union or organisation, a just and true account in writing of all moneys received and paid by the union or organisation since the last accounts were presented to the members and the then remaining sums of money and of all bonds and securities of the union or organisation.

(2) Within seven days of the presentation of accounts under subsection (1) the Treasurer or an officer of the Trade Union or Employer Organisation shall deliver to the Registrar copies of the accounts presented to the members pursuant to that subsection.

(3) Such account shall be audited by some fit and proper person or persons who is or are qualified to practice as accountants to be appointed by the Trade Union or Employer Organisation.

(4) Upon the account being audited the treasurer or other officer as the case may be shall, if thereupon required, hand over to the trade union or employer organisation the balance which on such audit appeared to be due from him, and shall also if required hand over to the trade union or employer organisation all securities and effects, books, papers and property of the trade union or employer organisation in his hands or custody.

(5) If the treasurer or other officer fails to hand over such things and documents as in subsection (4) required, the committee of management of the trade union or employer organisation or any member for and on behalf of the trade union or employer organisation may sue him in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all moneys since received by him on account of such trade union or employer organization and for the securities and effects, books, papers and property, in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of such trade union or employer organisation and in any such action the plaintiff shall be entitled to recover full costs of suit to be taxed as between legal practitioner and client.

Injunction to restrain misuse of funds

15. An injunction restraining any expenditure of funds of a trade union or employer organisation on anything, or in any manner, or authorised by the rules of the trade union or employer organisation or by any provisions of this Act, may be granted by the High Court on the application of any officer or member of the trade union or employer organisation or of the Registrar or of the Attorney General.

Audited accounts to be sent to Registrar

16. (1) Subject to subsection (2), every registered trade union or employer organisation shall transmit to the Registrar the account prepared and audited in accordance with section 14 within 1 month of its submission to the members of the trade union or employer organisation.

(2) If the Registrar, on receipt of an application made by a treasurer or other officer of a registered trade union or employer organisation, is satisfied that special circumstances exist which justify his so doing, subject to subsection (3) he may by order in writing exempt a registered trade union or employer organisation from the requirements as to audited accounts referred to in subsection (1).

(3) Where a trade union or employer organisation is exempt under subsection (2), the Registrar shall inspect or direct some person authorised by him in writing to inspect the accounts of such a trade union or employer organisation once at least in every year.

(4) Every officer of a registered trade union or employer organisation which fails to comply with the provisions of this section thereby commits an offence and shall be liable on conviction to a fine not exceeding \$1000.

Rules of registered trade unions and employer organisations

17. With respect to the rules of a registered trade union or an employer organisation the following provisions shall have effect –

- (a) the rules of every such trade union or employer organisation shall contain provisions in respect of the several matters mentioned in the Schedule; and
- (b) a copy of the rules shall be delivered by the trade union or employer organization to every person on demand of a payment of a sum not exceeding \$2.

Alteration of rules of trade union or employer organisation

18. (1) Every alteration of the rules of a registered trade union or employer organisation shall be registered with the Registrar and shall take effect from the date of registration unless some later date is specified under the rules.

(2) The rules of a registered trade union or employer organisation shall not be altered so that they cease to contain provisions in respect of the several matters in the Schedule.

(3) Any alteration to the rules of a registered trade union or employer organisation not registered or otherwise not made in compliance with this section shall be void ab initio.

Regulations

19. The Beretitenti acting in accordance with the advice of the Cabinet may make regulations respecting registration under this Act and in particular but without prejudice to the generality of the foregoing power with respect to –

- (a) the seal, if any, to be used by the Registrar for the purpose of registration under this Act;
- (b) the forms to be used for such registration;
- (c) the inspection of registers and documents kept by the Registrar and the making of copies of any entries therein;
- (d) the fees to be charged for registration and inspection and any other service or matter prescribed or permitted by this Act; and
- (e) generally for carrying this Act into effect.

PART III TRADE DISPUTES

Definitions

20. In this Part –

“intimidate” means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property;

“injury” includes injury to a person in respect of his business, occupation, employment or other source of income, and includes any actionable wrong; and

“trade dispute” means any dispute between employers and workers or between workers and workers which is connected with the employment, or with the conditions of employment of any person.

Freedom of association of workers

21. (1) No employer shall made it a condition of employment of any worker that such worker shall neither be nor become a member of any or a particular trade union or other organisation representing workers in any trade or industry, and any such condition in any contract of employment entered into before or after the commencement of this Act shall be void.

(2) Nothing contained in any law shall prohibit any worker from being or becoming a member of any trade union or cause a worker to be dismissed or otherwise prejudiced by reason of that worker’s membership or participation in activities of a trade union.

(3) Any employer who contravenes subsection (1) and every person who whether acting on his own behalf or on behalf of a trade union or of an employer or employer organisation and whether or not acting in contemplation or furtherance of a trade dispute, compels, persuades or induces or attempts to compel, persuade or induce, any employer to contravene subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding \$2000 and to a term of imprisonment not exceeding 1 year.

Immunity of trade unions or employer organisations from actions of tort

22. (1) An action against a trade union or employer organisation or against any member or official thereof on behalf of themselves and all other members of the trade union or employer organisation in respect of any tortious act alleged to have been committed by or on behalf of the trade union or employer organisation shall not be entertained by any Court.

(2) Nothing in this section shall affect the liability of a trade union or employer organisation or any official thereof to be sued in any Court in a matter touching or concerning the property or rights of a trade union or employer organisation other than in respect of any tortious act committed by or on behalf of the trade union or employer organisation in contemplation or in the furtherance of a trade dispute

Conspiracy in relation to trade disputes

23. (1) An agreement or combination of 2 or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be triable as a conspiracy if such act committed by 1 person would not be punishable as a crime.

(2) An act done in pursuance of an agreement or combination by 2 or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.

(3) Nothing in this section shall exempt from punishment any person guilty of a conspiracy for which a punishment is provided for by any law in force in Kiribati.

(4) Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace or sedition or any offence against the Republic.

(5) A crime for the purposes of this section means an offence for the commission of which the offender is liable to be imprisoned, either absolutely or at the discretion of the court as an alternative for some other punishment.

(6) Where a person is convicted in relation to any such agreement or combination as aforesaid to do or procure to be done an act which is punishable on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed 3 months, or such longer time, if any, as may have been prescribed by the law for the punishment of the said act when committed by 1 person

Removal of liability for interfering with another person's business

24. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills.

Intimidation or annoyance

25. (1) Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority –

- (a) uses violence to or intimidates such other person or his wife or children, or injures his property; or
- (b) persistently follows such other person about from place to place; or
- (c) hides any tools, clothes or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or
- (d) watches or besets the house or other place where such other person resides or works or carries on business or happens to be at the approach to such house or place; or
- (e) follows such other person with 2 or more other persons in disorderly manner in or through any street or road,

thereby commits an offence and shall be liable upon conviction to a fine of \$400 or to imprisonment not exceeding 1 year.

(2) Attending at or near any house or place in such numbers or in such manner as is by section 26(b) declared to be unlawful shall be deemed to be a watching and besetting of that house or place within the meaning of this section.

Peaceful picketing and prevention of intimidation

26. Notwithstanding anything contained in this Act –

- (a) it shall be lawful for 1 or more persons, acting on their own behalf or on behalf of a trade union or employer organisation or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working;
- (b) it shall not be lawful for 1 or more persons (whether acting on behalf of a trade Union or employer organisation or of an individual employer or firm, and notwithstanding that they may be acting in contemplation or furtherance of a trade dispute) to attend at or near a house or place where a person resides or works or carries on business or happens to be, for the purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working if they so attend in such numbers or otherwise in such manner as to be calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace; and any person who acts in contravention of this paragraph thereby commits an offence and shall be liable

upon conviction to a fine not exceeding \$500 or to a term of imprisonment not exceeding 1 year.

Repeal

27. Subject to section 28 the Trade Union Ordinance (Cap.97) (hereinafter referred to as the “repealed Ordinance”) is repealed.

Savings

- 28.**
- (a) All trade unions and other organisations registered;
 - (b) all appointments made; and
 - (c) any other thing made or done;

under the repealed Ordinance immediately before the coming into effect of this Act –

- (i) in the case of all trade unions and other organisations referred to in paragraph (a), shall be deemed to have been registered; and
- (ii) in the case of all appointments referred to in paragraph (b) shall be deemed to have been made; and
- (iii) in the case of any other thing made or done referred to in paragraph (c) shall be deemed to have been done or made, under this Act.

SCHEDULE
(Section 17)

1. The name of the trade union or employer organisation.
2. The whole of the objects for which the trade union or employer organisation is to be established, the purpose for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefits assured thereby and the fines and forfeitures to be imposed on any member of the trade union or employer organisation.
3. The manner of making, altering, amending and rescinding rules.
4. A provision for the appointment and removal of a general committee of management, of a treasurer and other officers.
5. A provision for the keeping of full and accurate accounts by the treasurer including a date for presentation of annual accounts to the members.
6. A provision for a meeting of members to be convened as soon as practicable after the end of the financial year with the express purpose of enabling the treasurer to report on the audited accounts to the members.
7. A provision for the investment of the funds or their deposit in a bank and for an annual or periodical audit of accounts.
8. The inspection of the books and names of members of the trade union or employer organisation by every person having an interest in the funds of the trade union or employer organisation.
9. The manner of the dissolution of the trade union or employer organisation and the disposal of the funds thereof available at the time of such dissolution.

TRADE UNIONS AND EMPLOYER ORGANISATION ACT 1997

EXPLANATORY MEMORANDUM

This Act is substantially the same as the Trade Unions Ordinance (Cap.97). The Act better defines “Trade Union” which Cap.97 included Employer Organisation and arguably other organisations not usually thought of as Trade Unions.

In Part I the definition of Trade Union is altered to make it conform with the common understanding of Trade Union and Employer Organisations are introduced as a separate concept.

Part II provides for immunity of Trade Unions and Employer Organisations from civil or criminal proceeding resulting from being in restraint of trade.

This Part also deals with Registration of Trade Union and Employer Organisation which is compulsory. A position of Registrar is created. Requirements to the accounts and finances of Trade Union and Employer Organisations are imposed.

Part III protects the rights of members of both Trade Unions and Employer Organisation and the organisations themselves in relation to industrial action. Those rights include, freedom of association, immunity in certain cases from being sued in Tort or for conspiracy

There are also provisions dealing with picketing and intimidation.

Michael N Takabwe
Attorney General