

REPUBLIC OF KIRIBATI
(No. 6 of 1998)

I assent,

Beretitenti
Assented: 9th July 1998

**AN ACT FOR THE REGULATION OF VILLAGE BANKS AND CONNECTED
PURPOSES**

Commencement:
1998

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 Village Banks Act 1998.

Interpretation

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

“Bank” means a Village Bank registered under this Act.

“Certificate of Incorporation” means a Certificate of Incorporation issued by the Registrar of Village Banks pursuant to section 9 (1) (b).

“Member” means a person who is a member of a Bank pursuant to section 24.

“officer” means any duly elected member for the time being of the committee of the Bank.

“register” means the register kept by the Registrar in accordance with section 10 (1).

“Registered Elector” means a person who:

- (a) is qualified to be an elector as defined in the Elections Ordinance (Cap.29B); and
- (b) is registered as an elector for any ward under section 8 of the Elections Ordinance (Cap.29B).

“Registrar” means the Registrar of Village Banks appointed under section 4.

“Ward” means a ward of an electoral district constituted under section 6 of the Elections Ordinance (Cap. 29B).

Commencement

3. Sections 17 and 18 shall come into operation on such date as the Minister shall by notice appoint.

PART II THE REGISTRAR

Registrar

4. (1) There shall be a Registrar of Village Banks whose office shall be a Public Office.

(2) The Registrar shall be appointed by the Beretitenti acting in accordance with the advice of the Public Service Commission.

Delegation of Powers

5. The Registrar may by notice in writing delegate to any public officer any of his functions and powers under this Act.

Liability of Registrar and the Republic

6. No liability shall attach to the Registrar in respect of any breach of duty imposed on him by this Ordinance and no liability shall attach to the Republic for any such breach.

PART III REGISTRATION OF BANKS

Registration of Banks

7. (1) Subject to subsection 2 the registered voters of any ward in Kiribati may apply to the Registrar for the registration of a Bank for that ward.

(2) No ward shall have more than one Bank.

Application for Registration

8. (1) An application for registration shall be made to the Registrar and shall be made in the prescribed form,

(2) The application may be made by any registered voter in a ward on behalf of the other registered voters of that ward.

Registration

9. (1) The Registrar, on being satisfied that an application has been completed and that the information given in it is in accordance with the requirements for the establishment of Banks under this Act, shall do the following things:

- (a) enter the name of the Bank in the register kept by him under this Act, together with such other particulars with respect to the Bank as may be prescribed; and
- (b) issue under his seal in duplicate a certificate that the Bank is incorporated under this Act; and
- (c) send one of those duplicates to the applicant and retain the other duplicate.

(2) Upon the issue of a certificate of incorporation pursuant to subsection (1) the Bank named in the Certificate shall, as from the date of the Certificate, be registered.

The Register of Village Banks

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

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

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

Village Banks to be bodies Corporate

11. The Registration of a Bank shall render it a body corporate under the name by which it is registered with perpetual succession and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings, and to do all things necessary for the purpose of its operation pursuant to this Act.

Evidence of Registration

12. A Certificate of Registration in the prescribed form signed by the Registrar, shall be conclusive evidence that the Bank named in the Certificate is duly registered, unless it is proved that registration has been cancelled.

Registered address

13. (1) Every Registered Bank shall have a registered address to which all notices and communications may be sent.

(2) Every Bank that wishes to change its registered address shall send written notice of such change in the prescribed form to the Registrar and that change of address shall take effect when such notice has been received and registered by the Registrar.

Service on Bank

14. Any summons, notice, order, or other document required to be served upon a Bank may be served by delivering the same to any officer of the Bank, or by sending it through the post in a registered letter addressed to the Bank at its registered address.

PART IV NAMES OF BANKS

Name of Bank

15. No Bank shall be registered under a name which:

- (a) is identical with that of any other Bank registered under this Act; or
- (b) is identical with that of a business or partnership carrying on business in Kiribati; or
- (c) is identical with that of any other body corporate incorporated or registered in Kiribati under any Act; or
- (d) so nearly resembles the name of any other body corporate or business or partnership as to be misleading; or
- (e) is, in the Opinion of the Registrar, undesirable

Change of Name

16. (1) If, through inadvertence or otherwise, a Bank at registration, is registered by a name which is in contravention of section 15, or of any other enactment relating to restrictions on the use of any name, the Bank shall, within a period of 6 weeks from the date of its being required by the Registrar to do so, or such longer period as he may allow, change its name in accordance with subsection (3) to a name that does not contravene section 15 or any other enactment.

(2) If a Bank makes default in complying with the requirements of subsection (1), it commits an offence and shall be liable on conviction to a fine not exceeding \$10 for every day on which the offence continues.

(3) Subject to section 15, a Bank may at any time apply in the prescribed form to the Registrar to change the name of the Bank.

(4) Upon receipt of an application under subsection (3) the Registrar shall, if in his opinion the proposed name does not contravene section 15, approve the application and subject to subsection (6) register the new name in the register and replace the duplicate

Certificate of Incorporation with a new Certificate of Incorporation altered from the original only to record the new name instead of the former name of the Bank.

(5) A change of name of a Bank made in accordance with this section shall take effect upon the day of registration of the new name in the register.

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

(7) A change of name of a Bank pursuant to this section shall not affect the rights and obligations of the Bank or render defective any legal proceedings by or against it in any court.

Prohibition on Use of Certain Names

17. (1) No person other than a Bank registered under this Act shall carry on business or trade under a name which includes the words “village bank” or words to like effect, or which implies that the person is a Village Bank registered under this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction:

- (a) in the case of a natural person be liable to a fine not exceeding \$1000 and to a term of imprisonment not exceeding 1 year.
- (b) in the case of a body corporate be liable to a fine not exceeding \$10,000.

Prohibition on Operating Unregistered Village Bank

18. (1) No person shall operate a Village Bank which has not been registered in accordance with this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction:

- (a) in the case of a natural person be liable to a fine not exceeding \$1000 and to a term of imprisonment not exceeding 1 year.
- (b) in the case of a body corporate be liable to a fine not exceeding \$10,000.

**PART V
TRANSFER AND VESTING OF ASSETS**

Transfer of Assets upon Registration

19. Where persons in a ward have operated a Village Bank immediately prior to the coming into operation of this Act, all properties, assets, monies and securities in the possession of any person on behalf of the members of that Village Bank shall, upon Registration of a Bank for that ward, be deemed to be transferred to and vested in the Bank so registered.

Transfer of Liabilities upon Registration

20. Where persons in a ward have operated a Village Bank immediately prior to coming into operation of this Act, all liabilities of that Village Bank shall, upon Registration of a Bank for that ward, be deemed to be transferred to the Bank so registered.

Procedure where new wards created

21. Where the Chief Electoral Officer, pursuant to section 6 of the Elections Ordinance (Cap.29B), divides an existing ward into two or more wards, and there is a Bank in that existing ward, the Bank in the ward divided shall apply to the Registrar in accordance with section 8 to register a Bank for the ward newly created on behalf of the Registered Voters in the new ward.

Assignment of contracts on Division of Ward

22. Where a ward, in which there is a Bank, is divided into two or more wards, all agreements securities and undertakings between that Bank and any members of the Bank in the original ward who are following the division of the wards, resident in a new ward shall upon registration of a Bank for that new ward be deemed to be assigned with all rights, obligations and liabilities to the new Bank, and all rights, obligations and liabilities of the original Bank will cease upon that assignment.

Transfer of records

23. Where any agreements securities or undertakings are assigned from one Bank to another Bank pursuant to Section 22, the assignor Bank shall within 30 days of the assignment forward to the assignee Bank:

- (a) copies of all records relating to the assigned agreements securities or undertakings; and
- (b) the originals of all instruments relating to the assigned agreements securities or undertakings.

**PART VI
MEMBERSHIP OPERATION AND MANAGEMENT**

Members of a Bank

24. Any persons who is for the time being qualified to be registered under section 8 of the Elections Ordinance (Cap 29B) as an elector in respect of a ward for which a Bank is registered under this Act, and whose name appears in the Register kept pursuant to section 9 of the Election Ordinance (Cap.29B) for that ward shall be a member of that Bank.

Liability of Members

25. Except where otherwise expressly provided in this Act, liability of a Bank shall not of itself impose on the members any liability in respect of any contract, debt, or other obligation of the Bank or incurred by the Bank.

Member's right to property

26. Except where otherwise expressly provided by this Act, membership of a Bank shall not confer upon the members any right, title, or interest, either legal or equitable, in the property of the Bank

Functions of Bank

27. (1) Subject to this Act, a Bank shall have the following functions:

- (a) to make available to it's members loan finance; and
- (b) to receive payment of loans from members and in the case of default to recover monies owed to it; and
- (c) to keep adequate records of it's finances and of any transactions it enters into; and
- (d) any other function incidental to carrying out its obligations under this Act.

(2) If any Bank carries on or proposes to carry on any activity which is outside the functions set out in subsection (1), the Registrar may give notice in writing to the Bank not to continue or proceed with that activity.

(3) If after the receipt of a notice under subsection (2) the Bank fails or refuses to comply with the Notice, every officer of that Bank, commits an offence and upon conviction shall each be liable to a fine not exceeding \$20 for every day during which that failure or refusal continues, unless, he proves that the failure or refusal has taken place without his authority or consent.

Execution of Contracts

28. (1) Any contract which, if made between private persons must be made by deed, shall when made by a Bank, be in writing signed on behalf of the Bank by at least 3 officers of the Bank.

(2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith shall, when made by a Bank, be in writing signed by any officer of the Bank acting on behalf of the Bank.

(3) Any contract between a Bank and any other person not recorded in writing and duly signed on behalf of the Bank in accordance with this section shall be void ab initio.

Committee

29. (1) Every Bank shall have a Committee which shall be responsible for the management of the Bank and shall have such powers and functions as shall be prescribed.

(2) Every Committee of a Bank shall be composed of such officers and members as shall be prescribed.

PART VII LENDING

Loans

30. (1) Subject to subsection (2) and to section 31, a Bank may loan money to a member of that Bank, and shall pay any debt it incurs, but shall not otherwise grant, gift or advance or in any other way disposed money to any person.

(2) No Bank shall advance any money to any person until a written agreement has been properly executed by the Bank and that person.

(3) Any advances made in contravention of this section shall be immediately repayable in full to the Bank.

Loan Criteria

31. In considering an application for a loan, the committee of a Bank shall take into account such criteria as may be prescribed.

Interest

32. Interest shall be payable on all loans granted by a Bank, including penalty interest in the case of default in repayment of a loan, at such rates as shall be prescribed.

Write off

33. (1) A Bank may, with the prior approval of the Registrar in writing, write off any amount owing to the Bank which it reasonably thinks is irrecoverable or if the Costs of recovery are likely to be equal to or exceed the amount owed.

(2) The Registrar shall not give his approval to write off any amount owing to a Bank unless it appears to him that in all the circumstances of the case the amount owing is either irrecoverable or the costs of recovery are likely to be equal to or exceed the amount owed.

PART VIII ACCOUNTS AND RECORDS

Accounts and Records

34. Every Bank shall keep such books of account and such other records as may be prescribed.

Annual Statement

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

- (a) the income and expenditure of the Bank during the Bank's last financial year; and
- (b) the assets and liabilities of the Bank at the close of the Bank's last financial year.

(2) The statement referred to in subsection (1) shall be accompanied by a certificate signed by at least 3 of the officers of the Bank to the effect that the statement has been submitted to and approved by the members of the Bank at a general meeting.

(3) If any default is made by a Bank in the observance of this section, every officer of the Bank commits an offence and shall each be liable on conviction to a fine not exceeding \$10 for every day during which the default continues.

PART IX LIQUIDATION

Voluntary liquidation

36. (1) A Bank may apply to the High Court for an order putting the Bank into liquidation if the Bank, at a general meeting of its members, passes a resolution that the Bank be put into liquidation and the resolution is confirmed at a subsequent general meeting called for that purpose and held not earlier than 30 days after the date on which the resolution to be confirmed was passed.

(2) In subsection(1) the term “resolution” means a resolution carried by a majority of the valid votes cast by members voting at the general meeting in person and for the purposes of that subsection the resolution shall be taken to be confirmed if carried again at the second general meeting by such a majority.

Liquidation by order of the Court

37. A Bank may be put into liquidation by order of the High Court if:

- (a) the Bank suspends its operations for the space of a whole year; or
- (b) the Bank is unable to pay its debts; or
- (c) the members of the Bank pass a resolution in accordance with section 36 that the Bank be put into liquidation and the court is satisfied that no other person’s interests will be prejudiced by the making of the order; or
- (d) the High Court is of the opinion that it is just and equitable in all the circumstances that the Bank should be put into liquidation.

Application for Liquidation order

38. (1) Any application to the High Court for an order putting a Bank into liquidation shall be by petition presented either by the Bank or by a member, or by a creditor of the Bank, or by the Registrar.

(2) All costs incurred by the Registrar in making an application for a liquidation order shall, unless the High Court otherwise orders, be a first charge on the assets of the Bank.

Surplus Assets

39. On the completion of the liquidation of a Bank (or on its dissolution by the Registrar) all surplus assets after the payment of all costs, debts, and liabilities shall, subject to any trust affecting the same, be deemed to have been transferred and shall vest in the Republic.

Dissolution by Registrar

40. (1) If at any time the Registrar is satisfied that a Bank is no longer carrying on its operations or has been registered by reason of a mistake of fact or law, he may make under his seal an order that the Bank is dissolved as from the date of the order.

(2) On the making of that order the Bank shall be dissolved and it’s registration shall be cancelled and the Bank shall cease to exist as from the date of the order.

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

Cancellation of Registration

41. Upon the completion of a liquidation of a Bank the Registrar shall by order cancel the registration of the Bank and the Bank shall cease to exist as from the date of that order.

Ward Ceases to Exist

42. Where a ward in which a Bank operates ceases to exist, the Members of the Bank shall be deemed to have resolved to apply for an order to put the Bank into liquidation pursuant to section 36 and the Registrar shall make an application to the High Court for such an order on behalf of the Bank.

PART X MISCELLANEOUS PROVISIONS

Inspection of register

43. (1) Any person may, on payment of the prescribed fee, inspect the register or any documents lodge with the Registrar.

(2) Any person may, on payment of the prescribed fee, obtain a copy of the certificate of the incorporation of any Bank or a copy of or extract from the register or any document lodged with the Registrar, to be certified by the Registrar under his seal.

(3) Any such copy or extract purporting to be under the seal of the Registrar shall be received in any court as prima facie evidence of the matters contained in those copies or extracts in all proceedings, civil or criminal.

Regulations

44. The Minister, acting in accordance with the advice of Cabinet, may make such regulations as he deems necessary for carrying into full effect the provisions of this Act, and without limitation, shall make regulations for the following purposes:

- (a) providing for the forms to be prescribed under this Act;
- (b) providing for the fees to be prescribed under this Act;
- (c) providing for other forms or fees which relate to any procedures under this Act;
- (d) providing for the terms and conditions that must be included in every loan agreement or security entered into by Banks;
- (e) providing for standard form documents to be used by Banks in carrying on their operations;
- (f) providing for requirements as to security to be taken by a Bank before advancing a loan;

- (g) providing for the constitution of the committee's and rules of meeting procedure of Banks;
- (h) providing for the Interest rates applying to loans by Banks;
- (i) providing for Rules governing the procedure for the liquidation and dissolution of Banks;
- (j) providing for the maximum amount of any loan given by a Bank to applicants at any time;
- (k) providing for any limitation on the purposes for which loans may be granted by a Bank.

Moneylenders Act Not to Apply

45. The Moneylenders Act 1988 (No. 4 of 1988) shall not apply to any Bank registered under this Act.

Taxation and Licences

46. A Bank Registered under this Act shall not be liable to pay income tax, or to pay any license fee which might otherwise be payable to any local government council.

VILLAGE BANKS ACT 1998

EXPLANATORY MEMORANDUM

1. The purpose of this Act is to regulate the existing unincorporated Village Banks which have been established in electoral wards.
2. Part II of the Act provides for the establishment of a Registrar of Village Banks.
3. In Part III section 7 restricts the establishment of village banks to one for every electoral ward and sections 8 and 9 set out the procedure for registration of Village Banks. Section 10 requires the Registrar to keep a register for Village Banks. Section 11 provides that upon registration of a Village Bank the bank takes on a legal personality. Section 14 provides for service of documents on Village Banks.
4. In Part IV sections 15 and 16 deal with the names of banks and section 17 prohibits the use of names that are misleading or are identical to any other bank or organisation. Section 18 makes it an offence to operate a Village Bank without having it registered under this Act and sets out the penalty for doing so.
5. Part V deems that all assets, monies and securities held by any person on behalf of members of Village Bank before this Act comes into force are transferred to that Village Bank upon registration under the Act. Section 21 provides for the division of a village bank where the ward which is served by that bank is divided to create new wards pursuant to section 6 of the Elections Ordinance (Cap. 29B). Section 22 provides for the transfer of loans and securities where a new Village Bank is created pursuant to section 21.
6. Part VI deals with membership and the operation and management of Village Banks. Sections 24 to 26 deal with membership and the rights of members of Village Banks. The functions of banks are set out in section 27. Section 29 requires every bank to establish a committee to administer and control the activities of the Bank.
7. In Part VII Sections 30 to 32 deal with lending by a bank to its members, and specifies some prerequisites to lending. Section 33 sets out the circumstances under which a Bank may write off any amount owing to it.
8. Part VIII requires banks to keep records and accounts and to deliver annually, to the Registrar financial statements.
9. Part IX deals with liquidation of a Bank. Section 36 provides for voluntary liquidation of banks and sections 37 and 38 provide for winding up of banks by order of the Court. Section 38 sets out who may apply to the High Court to have a Bank wound up and that if such application is made by the Registrar the costs incurred for such application shall take priority over any other interests on the assets.

10. Part X provides for inspection of the register, the making of Regulations, and excludes Village Banks from the operation of the Moneylenders Act 1988. Banks are also given exemption from Income Tax and the payment of licence fees to Local Government Councils.

Michael N. Takabwe
Attorney General
20 May 1998