

REPUBLIC OF KIRIBATI
(No. 3 of 1996)

I assent,

Beretitenti
Assented: 17th January 1996

**AN ACT TO AMEND THE PUBLIC FINANCE (CONTROL AND AUDIT)
ORDINANCE (CAP 79)**

Commencement:
1996

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

Short title and commencement

1. (1) This Act may be cited as the Public Finance (Control and Audit) (Amendment) Act 1996.

(2) This Act shall be deemed to have come into operation on 1 January 1990.

Amendment of Part IX

2. The heading to Part IX of the Public Finance (Control and Audit) Ordinance (Cap. 79) (in this Act referred to as “the principal Act”) is amended by inserting the word “members of the Maneaba ni Maungatabu” between the word “officers” and “recovery”.

Amendment of section 47

3. Section 47 of the principal Act is amended –

- (a) in subsection (3)(c) by repealing the word “shall” and substituting the word “may” in the fifth line; and
- (b) by adding a new subsection (7) as follows –

“(7) In this section, “public officer” includes a director or member of the Board or committee of a Government owned company, corporation, special fund and other body or authority established under any provision of any law and includes also other officers and employees of the same.”

Insertion of new section 47A, 47B, etc.

4. Sections 47A, 47B, 47C, 47D and 47E are inserted between sections 47 and 48 of the principal Act as follows –

“Imposition of surcharge on members of the Maneaba ni Maungatabu

47A. (1) In this section, “a member” means a member of the Maneaba ni Maungatabu and includes a former member, the Speaker and any officer or a member of a body or authority appointed pursuant to or under the Constitution.

(2) Where it appears to the Cabinet that a member –

- (a) has claimed and been paid or received or spent any amount which he is not entitled to under the Salaries and Allowances of Members of Maneaba ni Maungatabu Act (Cap. 92A) or any other law;
- (b) has claimed and been paid or received or spent any amount which a Commission of Inquiry established under the Commission of Inquiry Ordinance (Cap. 10) for the purpose of establishing the lawfulness or otherwise of such payment or expenditure, has found to have been paid, received or spent unlawfully;
- (c) has been responsible for causing any financial loss to the Government through his failure to comply with any of the provisions of the Proceedings by and Against the Republic Ordinance (Cap. 76A) or any other law or proper and lawful directions of the Cabinet;
- (d) has been responsible for any improper payment of public moneys or for any payment of public moneys that was not properly vouched, warranted or authorised;
- (e) has failed to account for any moneys;
- (f) has been responsible for any deficiency in or for the loss or destruction of or damage to any public moneys, stamps, securities, stores or other state land or property; and
- (g) has failed to account for an imprest issued to him within the time period as laid down in the relevant regulation,

the Cabinet may subject to section 47B surcharge such member with a sum that does not exceed –

- (h) any amount not entitled to or unlawfully paid;
- (i) any amount of financial loss or improper payment suffered by the Government;
- (j) any amount not accounted for or the amount of the deficiency;
- (k) the value of the property lost or destroyed;

- (1) the value of any property damaged or in the discretion of the Cabinet the cost of repairs.

Procedure for imposition of surcharge

47B. (1) Before imposing a surcharge under section 47A the Cabinet shall forward to the member against whom it is proposed to make a surcharge a notice in the prescribed form –

- (a) describing with particularity the act that is the subject of the notice;
- (b) demanding an explanation in writing within 30 days after the date on which the member receives the notice;
- (c) stating that, in the absence of an exculpatory explanation satisfactory to the Cabinet, the member will be required to repay to the Government the amount involved and that such repayment may be effected by surcharge of any salary or other payment made by the Government to such member; and
- (d) describing the member's right to appeal against any decision made by the Cabinet to the High Court.

Recovery of amounts of surcharge

47C. (1) If the Cabinet fails to receive a satisfactory explanation from the member notified under section 47B within 30 days of service of such notice on such member then and notwithstanding any other law the Cabinet shall commence recovery of the amount involved by directing such sums as are necessary to be withheld from such member's salary or other amounts payable to him by the Government.

(2) If the member concerned is a former member of the Maneaba ni Maungatabu and is not receiving a salary or other sums from the government, then the Cabinet –

- (a) shall enter into an agreement with the member to repay the amount involved in such instalments and over such period of time as may be appropriate; and
- (b) may require any such agreement to be accompanied by such security, guarantees, or other assurances of payment as the Cabinet believes to be appropriate.

(3) If –

- (a) a member refuses to enter into an agreement under subsection (2);
or

- (b) a member ceases to be a member before the amount involved has been recovered and refuses to enter into such an agreement,

then the Cabinet may bring an action against such member in any court of competent jurisdiction on behalf of the Government to recover the amount owed.

Appeal against surcharge

47D. (1) Any member against whom action is taken by the Cabinet under subsection (3) may appeal against the action of the Cabinet to the High Court at any time within 30 days after the Cabinet commences such action.

(2) The High Court may confirm, alter, or quash the surcharge and any such decision of the High Court shall be final.

(3) Any action, whether by surcharge, agreement, or suit to collect amounts owed to the Government under section 47C shall be stayed pending the disposition of such appeal.

(4) In any action brought by the Cabinet under section 47C, it shall be sufficient for judgment against the defendant if, in the absence of proof to the contrary, it is proved on behalf of the Government that the defendant was a member, and –

- (a) if the action is based on a loss or deficiency in public moneys, such member was guilty of conduct described in section 47A and such conduct caused such loss or deficiency; or
- (b) if the action is based on the loss, damage, or destruction of government property, the property was the responsibility of such member and his negligence or misconduct caused or contributed to such loss, damage, or destruction.

Annulment of surcharge

47E. (1) The Cabinet may, at any time, annul, waive, terminate a surcharge or reduce, or refund any amounts recoverable or recovered under section 47C whenever it appears to the Cabinet that –

- (a) the recovery was made by mistake or is not justified by the circumstances, or
- (b) the loss, destruction, or damage to government property was not due entirely to the negligence or misconduct of the member.”

PUBLIC FINANCE (CONTROL AND AUDIT) (AMENDMENT) ACT 1996

EXPLANATORY MEMORANDUM

1. The principal object of this Act is to afford the Cabinet the opportunity to surcharge a member including a former member of Parliament with any amount that such member may have claimed, been paid to or received or spent but the Cabinet, on the other hand questions or doubts the validity or propriety of such payment under the Salaries and Allowances of Members of the Maneaba ni Maungatabu Act (Cap. 92A) (see section 4, s.47A(2)(a)).
2. The imposition of the surcharge on a member will also arise if the payment or expenditure, referred to in paragraph 1 of this Explanatory Memorandum is questioned by a Commission of Inquiry established under the Commission of Inquiry Ordinance (Cap. 10) to inquire into the lawfulness or otherwise of those payments and expenditures. (see section 4(47A(2)(b))).
3. Other situations which may call for an imposition of a surcharge on a member include –
 - (a) failure on the part of the member to comply with provisions of the Proceedings by and against the Republic Ordinance (which relates to the signing of contracts which are not authorised by the Ordinance and the Cabinet which resulted in causing financial loss to the Government;
 - (b) improper payments of public moneys for which the member has been responsible;
 - (c) failure to account for money;
 - (d) causing deficiency loss or destruction or damage to public moneys, etc.;
 - (e) failure to retire an imprest within a prescribed period.(See section 4 (47A(c), (d), (e), (1) and (g)).
4. The mechanism to impose a surcharge is set out in section 4(47B) but the essential requirement is that a notice must be sent to a member informing him of what the Cabinet intends to do.
5. Section 4(47C) deals with the recovery of the surcharge which allows the Cabinet to direct that certain sums may be withheld from the member's salary or other amounts which may be payable to him by the Government.

In the case of a former member who is not receiving a salary or other sums from the Government the Cabinet will be required to enter into an agreement with the member to repay the amount involved by instalments or if such member refuses to enter into an agreement then the Cabinet may proceed to recover the amount involved in Court.

6. Section 4 (47D) deals with appeal by a member against the surcharge to the High Court which may confirm, alter or quash the surcharge. The decision of the High Court is final.
7. Section 4(47E) empowers the Cabinet to annul, waive or terminate the surcharge or reduce or refund any amounts recoverable or recovered if the recovery was made by mistake or the loss, destruction, or damage to government property was not due entirely to the negligence or misconduct of the member.
8. Other minor changes are contained in section 3 which changes the word “shall” to “may” in section 47(3)(c) in order to give the Minister a discretionary power whether or not to proceed with a suit against a public officer.

Further, the definition of a public officer is proposed to be widened to include also directors, and employees of government wholly owned companies and corporations in order to empower the Minister to impose a surcharge on them if necessary. Presently the definition appears to apply only to Government employees.

9. Under section 1(2), the Act will have a retrospective operation to 1 January 1990.

Michael N. Takabwe
Attorney General
10 November 1995