

REPUBLIC OF KIRIBATI
(No. 10 of 1997)

I assent,

Beretitenti
Assented: 7th July 1997

AN ACT TO AMEND THE PROVIDENT FUND ORDINANCE (CAP. 78A)

Commencement:
1997

MADE by the Maneaba ni Maungatabu and Assented to by the

Short Title

1. This Act may be cited as the Provident Fund (Amendment) Act 1997.

Amendment of section 20

2. Section 20 of the Provident Fund Ordinance (Cap. 78A) (hereinafter referred to as the “principal Ordinance”) is hereby amended by inserting the words, “Subject to Section 28,” before the words, “The amount standing...” in the first line of section 20 in subsection (1) and before the words, “An employee . . .” in subsection (2).

Amendment of section 21

3. Section 21 of the principal Ordinance is hereby amended by inserting the following words, “Subject to section 28” before the words, “No amount ...” in the first line of section 21.

Amendment of section 22

4. Section 22 of the principal Ordinance is hereby amended by inserting the following words, “Subject to section 28” before the words, “The Board shall” in the first line of section 22.

Amendment of section 23

5. Section 23 of the principal Ordinance is hereby amended by inserting following words, “Subject to section 28” before the words, “The Board“ in the first line of section 23.

Amendment of section 26

6. Section 26 of the principal Ordinance is hereby amended in –

- (a) subsection (1) by inserting the following, “Subject to section 28,” after the words, “shall be paid” in the fifth line and before the words “into the Lands Court,”; and
- (b) subsection (2) by inserting the following words “Subject to section 28” after the words “be paid” and before the words “to the Chief Lands” in the fourth line.

Amendment of section 28

7. Section 28 of the principal Ordinance is amended by repealing the whole of section 28 and substituting the following section –

“Member’s credit may be subject to sequestration

28. (1) Notwithstanding the provisions of any law to the contrary, a member’s contribution to the Fund, or any amount standing to his credit or any interest on any such contribution or amount, or any withdrawal, made by the authority of the Board from the Fund under any of the provisions of this Ordinance or the rights of any member acquired under this Ordinance or a member’s right to receive any annuity under any order made under the provisions of section 45, may, subject to subsection (2), be attached, sequestered or levied upon or be the subject of any other execution process, only in the following circumstances –

- (a) where there is a court judgment or order requiring that member to pay a sum of money to the Government; and
- (b) where there is a court judgment or order requiring that member to pay a sum of money to a person.

(2) No execution of a court judgment or order requiring that member to pay a sum of money to the Government or a person, referred to in subsection (1) shall be made by a Court unless –

- (a) that Court, is satisfied that that member –

- (i) has attained the age of forty five (45) years of age or more;
 - (ii) is about to leave or has left Kiribati with no intention of returning thereto;
 - (iii) is physically or mentally incapacitated from engaging in any further employment; or
 - (iv) has died; and
- (b) that Court, after making due inquiry as to the financial position and other financial means of that member to pay such sum of money to the Government or that person, is further satisfied that such member's contribution to the Fund and any other financial rights and entitlement referred to in subsection (1) is the only financial means of such member to pay such sum of money to the Government or that person.

(3) Subject to subsection (1) all moneys paid out of the Fund on the death of any member shall be deemed to be impressed with a trust in favour of the person nominated under the provisions of section 25 by the deceased member or by his will or if no such person has been nominated the person or persons determined by the court in accordance with the provisions of section 26(1) to be entitled thereto and shall be deemed not to form part of the deceased member's estate nor to be subject to his debts.

New section 30

10. Section 30 of the principal Ordinance is amended by repealing the whole of section 30 and substituting the following –

“30. Subject to section 28, the Board may make payment of any sum due as a benefit or the payment of any annuity payable under this Ordinance to a member or nominee in any country in which that member or nominee is resident at the time when such payment becomes due or is paid.”

THE PROVIDENT FUND (AMENDMENT) ACT 1997

EXPLANATORY MEMORANDUM

1. The main objective of this Bill is to amend the Provident Fund (Cap. 78A) so as to enable the Provident Fund Board to use a member's credit in the Fund for the purpose of clearing that member's debt with the Government, statutory corporations and companies wholly owned by or on behalf of Government or any other person as may be determined by a court.

2. In order to achieve the above objective, Section 28 is repealed and a new section 28 is substituted.

This new section 28 allows for a member's credit in the Fund to be used only where there is a court judgment or order requiring that member to pay a sum of money to the Government, or any other person.

3. In light of that major amendment in Section 28, the following sections, section 20, 21, 22, 23, 26 and 30 are amended by making all these sections, which deal with the Board's duty to pay out money from a members credit in the fund, subject to section 28. This amendment is necessary so that a Court Judgment or order in favour of the Government, statutory corporations or government owned companies or any other person will take precedence over a members rights in relation to the fund

Michael N. Takabwe
Attorney General
5th May 1997