

REPUBLIC OF KIRIBATI
(No. 11 of 2000)

I assent,

Beretitenti.
Assented: 8th December 2000

ACT TO AMEND THE COMPANIES ORDINANCE (CAP 10A)

Commencement:
2000

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 Companies (Amendment) Act 2000.

(2) This Act shall be deemed to have come into operation on 1 January 1982.

Insertion of new sections 25A and 25B

2. The Companies Ordinance 1979 (N.5 of 1979) (in this Act referred to as the principal Ordinance) is amended by inserting two new sections 25A and 25B between section 25 and section 26 of the principal Ordinance as follows —

“Shareholding for company wholly owned by the Republic

25A. For the removal of doubt where all the shares in a company are for the time being wholly owned by the Republic of Kiribati—

- (a) section 5 of the principal Ordinance) (which relates to companies ceasing to have members) does not apply to such company; and
- (b) the shareholder and beneficial owner for such company to be registered in the Register of Companies kept under sections 6 and 24 of the principal Ordinance shall be the Republic of Kiribati; and
- (c) the individual from time to time responsible for exercising the right, power and obligation of the Republic of Kiribati as a member of such company shall be the Minister assigned for the time being by the Beretitenti under section 47(1) of the Constitution to be responsible for such company; and

- (d) if for any reason, responsibility for such company is not assigned to a particular Minister under section 47(1) of the Constitution, the Beretitenti shall be deemed to be the Minister responsible for such company; and
- (e) unless by way of formal notice the Registrar is otherwise informed, the address for service of the Minister assigned for the time being to be responsible for such company, shall be the Office of the Secretary for the relevant Ministry for which such Minister is responsible for the time being or the Secretary for the Cabinet, where no Minister has been assigned, as the case may be.

Shareholding for company partly owned by the Republic

25B. For the removal of doubt, where the shares in a company are partly owned by the Republic of Kiribati —

- (a) section 25 of the principal Ordinance; and
- (b) paragraphs (b), (c), (d) and (e)) of section 25A of this Act apply to such company.”

COMPANIES (AMENDMENT) ACT 2000

EXPLANATORY MEMORANDUM

This Act serves to make the shareholding and administration of Government companies more meaningful and clearer.

Since 1982 a number of Government economic development initiatives have made use of private companies with Government ownership. In each case the shares representing the equity ownership must be seen to be owned, in their underlying beneficial ownership, by the Republic; so that the named shareholder is only nominal or, a trustee for the underlying owner.

At different times during the period 1982 to the present, the Government owned shares have been distributed in different ways. In the early part of this period Directors appointed from time to time were transferred one share. But this was unnecessary as it is not essential for a director of a company to be a shareholder. More recently the shares in Government owned companies have been distributed to the Minister of the Ministry assigned to that company and to the Secretary for that Ministry. This was because section 25 of the Ordinance required private companies to have at least 2 shareholders (also referred to as 'members').

These administrative practices create the problem that when shareholding directors retire from the directorship, or when there are new Ministers appointed, or when a Secretary is transferred from his position, the shares need to be transferred to a new member. Often the transferors are not prepared or signed in a timely way.

To avoid this difficulty it is provided in the Bill that shares of Government owned companies shall in all cases be registered to the Republic of Kiribati. For ease of administration of the Company Registry it will be possible to communicate with the shareholder because the Act provides that the Minister assigned by te Beretitenti or in default of assignment, te Beretitenti himself, shall be treated as the person who is the shareholder from time to time, and the office of the Secretary of that Ministry, or the Secretary to Cabinet (as the case may be) is the place for delivery of notices to shareholder.

Michael N. Takabwebwe
Attorney General
May 2000