

**REPUBLIC OF KIRIBATI**

(No. 14 of 2008)

I assent,

Beretitenti

*Assented: 23<sup>rd</sup> December 2008*

AN ACT TO AMEND THE PROVIDENT FUND ORDINANCE (CAP 78(A)) TO  
CATER FOR THE PROVISION OF SHARES FOR DECEASED MEMBERS'  
DEPENDANTS AND FOR CONNECTED PURPOSES

Commencement:  
2008

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

**1. Short title**

This Act may be cited as the Provident Fund (*Amendment*) Act 2008.

**2. Interpretation**

In this Act 'principal Act' means the Provident Fund Ordinance, Cap 78(A) as amended from time to time.

**3. Amendment of section 26**

1. Section 26(1) of the principal Act is amended by repealing the words "*in accordance with the law for the time being in force*" appearing after the word "*disposal*" and substituting the words "*as follows:*" and by inserting the following subsections:

*"(a) the Court may order any sum standing to the member's credit in the fund to be apportioned among the dependants of the deceased member or any of them as the Court thinks fit or,*

*(b) to be allotted to any dependant;*

*and the sum so allotted to any dependant shall be paid to him or be invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit.”*

2. Section 26 of the principal Act is further amended by inserting the following new subsections (2) and (3) and by renumbering subsection (2) as subsection (4).

*“(2). Where, an applicant being made it appears to the court that, on account of the variation of the circumstances of the various dependants, or of any other sufficient cause, an order made under this subsection ought to be varied, the Court may make such order as to the apportionment for the variation for the former order as in the circumstances of the case, the court may think just.*

*(3) The word “dependants” shall have the same meaning as defined in section 3 of the Workmen’s Compensation Ordinance Cap 102 except that the word “workman” appearing in the definition shall be replaced by the word “member”.*”

## EXPLANATORY MEMORANDUM

Section 26 of the Provident Fund Ordinance that is now in force gives the Lands Court the power to distribute the funds of a deceased member in accordance with the law that is now in force. The law that is now in force is not specifically stated.

We know, however, that in dealing with estates of deceased natives, the Lands Court usually applies the Native Lands Code. This is where the problem arises.

The Lands Code does not really present any problem when a member has children. Problems arise when a member does not have any children. The reason is simple.

The Native Lands Code applies to customary inheritance of native lands. It does not really apply to monetary estates or to our present day situations. As a result when a member dies issueless and he has been supporting his wife or parents or other people during his lifetime these people will not have any share when the KPF monetary estate is distributed.

The reason for this is that the Native Lands Code provides only for the distribution of issueless estate among the member's next of kin only, thereby excluding other dependants of the member such as his/her parents and spouse from such distribution. The definition of "next of kin" does not include a spouse, the parents or other people who have been supported by the member during his lifetime. (section 11(v)(b) of Native Lands Code).

To rectify this problem, KPF Act is being amended to ensure fairer distribution of the funds standing to the credit of a deceased member. The distribution approach with respect to workmen's compensation is adopted to accommodate the needs of the deceased KPF member's dependants, in particular those who would have otherwise been excluded from the distribution under the existing Lands Code approach. The attempt to do this can be gleaned from the newly added subsections of section 26.

What is important is the discretion the Court has in deciding how the fund is to be distributed amongst dependants. This is important because the circumstances of each dependant cannot be expected to be identical in all cases. (Section 26(1) (a) and (b)).

The new subsection (2) again gives the court power to deal with the share of a dependant after being satisfied that the change in the circumstance of that dependant warrants the variation of the order relating to the distribution of the fund in the first instance.

The new subsection (3) sets out who the dependants are by referring us to the definition of "dependants" in the Workmen's Compensation Ordinance Cap 102. By applying this definition, the objective is to ensure that those who have been supported by the member during his lifetime will continue to be supported after his/her death.

Kouramaere Kautoa  
MP Makin