

LAWS OF THE REPUBLIC OF KIRIBATI

GOVERNMENT LIABILITY ACT 2010

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REPUBLIC OF KIRIBATI
(No. 9 of 2010)

I assent,

Beretitenti
Assent published: 6th December 2010

An Act to prescribe the limits of Government of Kiribati liability in contract and
tort, and for related purposes

Commencement:
2010

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

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Government Liability Act 2010.

2. Application of this Act

(1) All tort and contract claims against the Government of Kiribati shall be regulated by this Act.

(2) In this Act, the word ' Government' means the Government of Kiribati.

PART II – GOVERNMENT CONTRACTS

3. Validity of contracts

(1) All contracts with the Government or any agency of the Government shall be:

(a) in writing

(b) in the name of the Government;

(c) made pursuant to an appropriation, if the contract entails an expenditure of public money;

- (d) certified in writing by the Secretary of Finance that an appropriation has been made for the full amount of the contract liability and that funds are available;
 - (e) approved in writing as to form and execution by the Attorney-General and
 - (f) executed by a contracting officer authorized to sign on behalf of the Government.
4. Suits authorized
- (1) The Attorney-General may sue;
 - (a) to avoid the obligation of any contracting officer, department or agency to pay under contract; or
 - (b) to recover payments made, if services performed under the contract are so unsatisfactory or incomplete, or so inconsistent with the price that payment would involve unjust enrichment.
 - (2) The contrary opinion of the contracting officer, department or agency involved does not affect the authority of the Attorney-General under this Section.

PART III – TORT LIABILITY

5. Limitation of Liability
- (1) The Government shall not be liable for more than:
 - (a) \$25,000 in any action for wrongful death;
 - (b) \$50,000. in any other tort action; or
 - (c) \$50,000 in the aggregate for any number of tort claims arising out of a single occurrence.
 - (2) Awards or resettlements to multiple claimants which would exceed \$50,000 shall be fairly apportioned not to exceed \$50,000 in the aggregate.

- (3) If the Government is insured for a greater amount the liability shall be the same as the insurance coverage.
 - (4) The Government shall not be liable for interest prior to judgement or for punitive damages.
6. Liability for employee's conduct
- (1) Subject to Subsection (2) of this Section, the Government is liable for the torts of its officers, agents and employees, while working in the scope of their employment, under circumstances where the Government, if a private person, would be liable to the claimant.
 - (2) The Government is not liable for the following acts or omissions of its officers, agents, or employees:
 - (a) an act or omission of an officer, agent or employee exercising due care in the execution of a valid or invalid statute, regulation, or Cabinet order;
 - (b) the performance or failure to perform a discretionary duty, whether or not the discretion is abused;
 - (c) the assessment or collection of taxes, or the detention of any goods or merchandise by any law enforcement, tax or customs officer;
 - (d) the imposition or establishment of a quarantine;
 - (e) an assault or battery, except an assault or battery committed by a policeman acting in the line of duty, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract rights; or
 - (f) denial of, or failure to make, a medical referral to a medical facility outside Kiribati.
 - (3) The liability of the Government provided in Subsection (1) above for torts resulting from the acts or omissions of its officers, agents and employees while acting within the scope of their office or employment, shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the officer, agents and employees, or their estate, whose act or omission gave rise to the claim.

- (4) In this Act 'Officers' agents and employee's include officers, agents and employees of the Government and its agencies, and, persons acting for or on behalf of the Government, or its agencies, in an official or volunteer capacity, temporarily or permanently, whether with or without compensation.

PART IV – CLAIMS AGAINST THE GOVERNMENT

7. Filing of claims

Notwithstanding any provisions of the Limitations of Actions Act, any claim for torts against the Government must be instituted within one year from the date such claim arise.

8. Interest, costs and attorney fees

- (1) The Government is liable for interest only from the date of judgement, at the rate ordered or as agreed to in court.

- (2) The Government is not liable for punitive damages or attorney fees.

9. Settlement of suits

Subject to approval of the court in which the action is pending, the Attorney-General, unless instructed, may settle a suit at any time before final judgement.

10. Release

Payments shall be made only upon receipt of a written judgement by the department or agency of the Government concerned and certified by the Attorney-General.

11. Protection of Government assets

No assets of the Government, any local government, any statutory authority or any entity in which the Government or any local government owns or controls a majority of the beneficial interest shall be seized, attached or subject to execution with respect to any claim or to satisfy any judgement.

GOVERNMENT LIABILITY ACT 2010

Explanatory Memorandum

The Act sets out to limit the Government's liability in tort. It is in effect modifying the well known common law principle of "vicarious liability" where the employer is liable for the actions of his employee arising out and in the course of employment. The main purpose of introducing this Act is to protect the public property from being used up by few individuals. It is accepted that numerous successful suits against the Government will cause substantial strain on the Government funds and properties and will no doubt have dire consequences on the operation of the Government and the public at large resulting in the enormous loss of public funds and properties.

The Act is divided into four parts containing eleven sections. Part I deals with preliminary matters. And it is worth to note the wider application of this Act where the word "Government" extends to councils, statutory corporations and government owned company or an entity the majority of shares is held by either the Government or the council.

Part II deals with Government Contracts and the procedures of how to enter into them. Section 4 authorizes the Attorney General to initiate legal proceedings for and on behalf of the Government.

Part III sets out the Government's liability in tort. Section 5 sets the limit in (a) \$25,000 in any action for wrongful death which is consistent with the awards for death under the Workmens Compensation Ordinance; (b) \$50,000 for any other tort action, example damages resulting from negligence; and (c) \$50,000 in the aggregate for any number of tort claims arising out of a single occurrence. Section 6 describes how the Government is liable and lists out instances where the Government is not liable for the acts or omissions of it officers, agents or employees. Section 6(3) explains that those responsible for tort are liable for disciplinary sanctions and recovery proceedings under Part IX the Public Finance (Control and Audit) Ordinance (Cap 79). Section 6 (4) defines what "officers, agents and employees" are.

Part IV is a Miscellaneous part. Apart from stating that the Limitation Act 2004 applies to this Act it also states what is Government liable to when the court decides on actions against the Government.

Titabu Tabane
Attorney General