

KIRIBATI LAW SOCIETY ACT 2006

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REPUBLIC OF KIRIBATI

(No. 7 of 2006)

I assent,

Beretitenti

26 January, 2007.

**AN ACT TO ESTABLISH THE KIRIBATI LAW SOCIETY, TO PROVIDE
FOR THE TAKING OF DISCIPLINARY ACTION AGAINST LAWYERS,
AND FOR RELATED MATTERS.**

Commencement:

26 January 2007

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 *Kiribati Law Society Act 2006*.

2. Interpretation

In this Act, unless the context otherwise requires—

'Admission Rules' means rules of court regulating the admission of legal practitioners to practise in Kiribati made under section 97 of the *Constitution*;

'Chief Registrar' means the Chief Registrar of the High Court;

'Code of Ethics' means the Code of Ethics adopted under section 12;

'exempt member' means a member specified in the Schedule to this Act;

'judicial officer' means a Judge of the Court of Appeal or of the High Court, or a magistrate;

'lawyer' means a person admitted to practise as a legal practitioner of the High Court under the Admission Rules, but does not include a person whose right to practise has been suspended or whose name has been removed from the Roll under such rules;

'lay person' means a person who is not a lawyer;

'President' means the President of the Society appointed under section 6(2);

'Register' means the Register of Lawyers kept by the Secretary under section 9;

'Roll' means the Roll of Lawyers kept by the Chief Registrar under the Admission Rules;

'the Rules' means the Rules of the Society adopted under section 8;

'Secretary' means the Secretary of the Society appointed under section 6(2);

'the Society' means the Kiribati Law Society, established under section 3.

PART II—THE KIRIBATI LAW SOCIETY

3. The Society

- (1) There is hereby established a body to be known as the Kiribati Law Society.
- (2) The Society shall be—
 - (a) a body corporate with—
 - (i) perpetual succession; and
 - (ii) a common seal;
 - (b) capable—
 - (i) of suing and being sued in its corporate name;
 - (ii) of acquiring and disposing of property; and
 - (iii) subject to this Act, of performing all such acts as bodies corporate may by law perform.
- (3) The Society may not exercise any of its powers except for the purpose of performing its functions under this Act.

4. Membership

- (1) Every lawyer may become a member of the Society.
- (2) Every member of the Society, other than an exempt member, shall pay such membership fee as may be prescribed by the Rules.
- (3) The Rules may provide for circumstances in which the Council may waive or reduce the membership fee payable by a member, or class of members.
- (4) The Secretary shall enter the name of each member, and such particulars as are provided for under section 9, on the Register.
- (5) Where a member of the Society has not paid the membership fee within three months of the date prescribed by the Rules, the Council may request the Attorney-General to petition the High Court for a suspension of the lawyer's right to practise in accordance with the provisions of the Admission Rules until such time as all arrears are paid.
- (6) The Rules may make provision for lay persons to become associate members of the Society, on such terms and with such rights, privileges and obligations as may be prescribed by the Rules.

5. Objects of the Society

The objects of the Society shall be to—

- (a) safeguard and promote the interests of its members;
- (b) uphold the honour, dignity, reputation and independence of its members;

- (c) further the interests of its members in connection with the practice of their profession;
- (d) to control and regulate the practice in Kiribati by lawyers of the profession of the law, and ensure compliance with the Code of Ethics;
- (e) uphold standards for the education, continuing education and professional responsibility of its members; and
- (f) assist and promote, for the purpose of upholding the rule of law and facilitating the administration of justice in Kiribati, the reform of the law.

6. The Council

- (1) The affairs of the Society shall be managed by a Council, which shall comprise five Councillors elected from among members of the Society at a general meeting of the Society.
- (2) The Council shall appoint, from among the Councillors, persons to hold the offices of President, Secretary and Treasurer.
- (3) A Councillor shall remain in office for a term of two years as from the date of his or her election, unless at some earlier time—
 - (a) by writing addressed to the President, or to the Vice-President in the case of the President, if he or she resigns as a Councillor;
 - (b) his or her name is removed from the Register under section 10; or
 - (c) the Council is dissolved under subsection (5).
- (4) Where the term of office of a Councillor comes to an end under paragraph (a) or (b) of subsection (3), the Council shall appoint a Councillor or a lawyer to serve the balance of the term of the Councillor who has resigned or whose name has been removed from the Register, as the case may be.
- (5) The Council may be dissolved at any time following a motion of no confidence supported by at least two-thirds of all members of the Society at a general meeting of the Society convened for the purpose of considering such a motion.
- (6) Where the Council is dissolved under subsection (4), the general meeting at which the motion of no confidence was carried shall immediately proceed to elect a fresh Council.

7. The first general meeting of the Society

- (1) As soon as practicable following the entry into force of this Act the Society shall convene a general meeting (in this Act called 'the first general meeting of the Society') for the purpose of electing the first Councillors.
- (2) The first general meeting of the Society shall be held at a time and place to be appointed by the Attorney-General, who shall preside at such meeting.
- (3) For the avoidance of doubt, subsequent general meetings of the Society shall be held at a time and place appointed by the President, or otherwise in accordance with the Rules.

8. Rules of the Society

- (1) Within six months of the date of the first general meeting of the Society, the Society shall convene a general meeting for the purpose of adopting rules for the conduct of the Society's affairs.
- (2) Without limiting the generality of subsection (1), the Rules shall provide for—
 - (a) the manner of convening of general meetings of the Society and of meetings of the Council and any committee, and the quorum and procedures thereat;
 - (b) the amount of fees to be paid by members, which shall be no more than is reasonably necessary to provide for the objects of the Society and to enable it to carry out its functions;
 - (c) the financial procedures to be followed by the Society;
 - (d) custody and use of the common seal;
 - (e) the establishment of committees;
 - (f) the procedure for amendment of the Rules; and
 - (g) such other matters for which, by this Act, rules are to be made.
- (3) The Rules may differentiate between the rights, privileges and obligations of members resident in Kiribati and the rights, privileges and obligations of members not resident in Kiribati.
- (4) The Rules shall not be inconsistent with the provisions of this Act.

9. Register of Lawyers

The Secretary shall keep a Register of Lawyers in which shall be entered—

- (a) the—
 - (i) name;
 - (ii) contact details; and
 - (iii) qualifications,
 of each member; and
- (b) any subsequent alteration in any of the particulars referred to in paragraph (a).

10. Removal from the Register

The Secretary shall remove from the Register the name of a lawyer—

- (a) who has died;
- (b) where the Chief Registrar advises that—
 - (i) the name of the lawyer has been removed from the Roll;
 - (ii) the right of the lawyer to practise has been suspended under the Admission Rules;
- (c) where the admission of the lawyer was—
 - (i) conditional in any way; or

(ii) for a fixed time,

and the lawyer no longer satisfies a condition of his or her admission, or the time has elapsed, as the case may be.

PART III—PROFESSIONAL CONDUCT

11. Fundamental obligations of lawyers

A lawyer must, in the course of his or her practice, comply with the following fundamental obligations—

- (a) the obligation to uphold the rule of law and to facilitate the administration of justice in Kiribati;
- (b) the obligation to be independent in providing professional services to his or her clients;
- (c) the obligation to act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients; and
- (d) the obligation to protect, subject to his or her overriding duties as an officer of the High Court and to his or her duties under any Act, the interests of his or her clients.

12. Code of Ethics

- (1) Within six months of the date of the first general meeting of the Society, the Society shall convene a general meeting for the purpose of adopting a Code of Ethics for lawyers.
- (2) The Code of Ethics may be amended only at a general meeting of the Society.
- (3) The Society must make a copy of the Code of Ethics available for public inspection and purchase during office hours.

13. Complaints

- (1) Any complaint that a lawyer, other than an exempt member, has breached any—
 - (a) fundamental obligation under section 11; or
 - (b) provision of the Code of Ethics,
 shall be made in writing to the Council, which shall examine the complaint.
- (2) Upon receipt of a complaint under subsection (1) the Council shall forthwith provide a copy of the complaint to the lawyer whose conduct is the subject of the complaint.
- (3) Where the Council considers that the complaint is amenable to such an approach, it shall first attempt to bring about an amicable resolution of the complaint between the parties concerned.
- (4) Where—
 - (a) the complaint is not resolved under subsection (3); or

(b) the Council considers that the complaint is not amenable to an attempted resolution under subsection (3),

and the Council considers it necessary that there should be a formal inquiry into the complaint, a Professional Conduct Committee shall be established under section 15 to inquire into the complaint.

(5) The Council shall inform the complainant and the lawyer whose conduct is the subject of the complaint whether or not the Council has considered it necessary that there should be a formal inquiry, and in the event of its decision being that such an inquiry is unnecessary shall, on the request of the complainant, furnish him or her with its reasons in writing.

(6) Where—

(a) a Professional Conduct Committee is to be established to inquire into a complaint made under subsection (1); and

(b) the Council considers that the nature of the complaint is such that the right to practise of the lawyer whose conduct is the subject of the complaint should be suspended pending the outcome of the inquiry,

the Council may request the Attorney-General to petition the High Court for a suspension of the lawyer's right to practise in accordance with the provisions of the Admission Rules, pending the outcome of the inquiry.

14. Attorney-General or judicial officer may refer information to Council

The Attorney-General or any judicial officer may at any time refer to the Council any information concerning the conduct of a lawyer, other than an exempt member, in his or her professional capacity and thereupon the Council shall proceed as if a complaint had been made to it under section 13.

15. Professional Conduct Committee

(1) Subject to subsection (2), a Professional Conduct Committee shall comprise—

(a) one lawyer appointed by the Attorney-General, who shall be the Chair of the Committee;

(b) one lawyer appointed by the Council; and

(c) one lay person appointed by the Council.

(2) No Councillor shall be eligible for appointment as a member of the Professional Conduct Committee.

(3) The Secretary shall be the secretary to the Professional Conduct Committee and shall record minutes of the proceedings of the Committee and perform such other duties as the Chair of the Committee shall direct.

(4) The Council may make rules governing the procedure to be followed by a Professional Conduct Committee.

16. Powers of a Professional Conduct Committee

- (1) A Professional Conduct Committee shall have the powers of the High Court to summon witnesses, to call for the production of books and other documents, and to examine witnesses and parties concerned on oath.
- (2) Summonses for the attendance of witnesses or other persons, or for the production of books or other documents shall be signed by a member of the Professional Conduct Committee or by the Secretary, and oaths and affirmations may be administered by a member of the Committee or by the Secretary.
- (3) Where a Professional Conduct Committee considers it desirable, for the purpose of avoiding expense or delay or for any other special reason, it may receive evidence by affidavit or administer interrogatories and require the person to whom the interrogatories are administered to make a full and true reply to such interrogatories.
- (4) No person giving evidence in any inquiry shall be compelled to incriminate himself or herself and shall, in respect of any evidence so given, be entitled to all the privileges to which a witness giving evidence before the High Court is entitled

17. Immunity of members of a Professional Conduct Committee

No member of a Professional Conduct Committee shall be liable to any action or suit for any act, matter or thing done, or ordered to be done, by him or her in good faith in his or her capacity as member of the Committee.

18. Right of appearance and representation

- (1) The lawyer whose conduct is the subject of an inquiry, and any other person by leave of the Professional Conduct Committee, may attend the inquiry in person or may be represented by a lawyer.
- (2) The lawyer whose conduct is the subject of an inquiry by the Professional Conduct Committee shall be entitled to—
 - (a) cross-examine witnesses called against him or her;
 - (b) call evidence in his or her defence; and
 - (c) address the Committee on the matter of the complaint.

19. Determination of complaint

After inquiring into a complaint under this Part the Professional Conduct Committee shall either uphold or dismiss the complaint and shall publish its reasons for so deciding.

20. Powers of Professional Conduct Committee where complaint upheld

Where a complaint is upheld under section 19, a Professional Conduct Committee may take any of the following measures against the lawyer whose conduct was the subject of the inquiry—

- (a) censure or reprimand the lawyer;
- (b) order the lawyer to apologise to the complainant;

- (c) if the complaint concerned an allegation of over-charging, order the lawyer to—
 - (i) reduce his or her fees for the services provided to the complainant; or
 - (ii) refund an amount to the complainant;
- (d) order the lawyer to pay to the Society a fine not exceeding \$1000;
- (e) request the Attorney-General to petition the High Court for—
 - (i) a suspension of the lawyer's right to practise; or
 - (ii) the removal of the lawyer's name from the Roll,
in accordance with the provisions of the Admission Rules;
- (f) order the lawyer to pay to the complainant any costs and expenses incurred by the complainant in respect of the inquiry; and
- (g) order the lawyer to pay to the Society the costs of the inquiry.

21. Appeals

- (1) Any lawyer against whom measures are taken under section 20, other than under section 20(e), may appeal to the High Court against the order or decision of a Professional Conduct Committee.
- (2) An appeal under subsection (1) shall be brought within 21 days of the date of the Committee's decision, or within such further period as the High Court may in any case allow.
- (3) Notice of any appeal under subsection (1) shall be served on the Society, which shall accordingly be a respondent to the appeal, and shall be entitled to be represented by a lawyer and to be heard.
- (4) On hearing an appeal brought under subsection (1) the High Court may confirm, reverse, or vary in accordance with this Act, the order or decision of the Professional Conduct Committee to which the appeal relates.
- (5) Unless the High Court otherwise directs, no order or decision of a Professional Conduct Committee shall be deemed to be stayed by reason only of the fact that an appeal is pending against that order or decision.

PART IV—MISCELLANEOUS

22. Senior Counsel

- (1) The Beretitenti, acting in accordance with the advice of the Chief Justice and the Council, tendered after consultation with the judges of the Court of Appeal, Attorney-General and the Council, may confer on a suitably qualified lawyer the rank of Senior Counsel.
- (2) A lawyer who holds the rank of Senior Counsel ceases to hold that rank if—
 - (a) his or her right to practise is suspended; or
 - (b) his or her name is removed from the Roll,
in accordance with the provisions of the Admission Rules.

23. Lay person not to practise as a lawyer

- (1) Subject to subsection (2), any lay person who—
- (a) practises or acts as a lawyer; or
 - (b) wilfully pretends to be, or takes or uses any name, title, addition or description implying that he or she is duly qualified to practise or act as a lawyer, or that he or she is recognised by law as so qualified,

commits an offence and is liable upon conviction to imprisonment for not more than two years and a fine not exceeding \$10,000.

- (2) Subsection (1) does not apply to a lay person—

- (a) who, with the leave of the Chief Justice, is employed as a para-legal—
 - (i) by a lawyer; or
 - (ii) by the Republic;
- (b) in the employ of the Republic, in respect of their official duties; or
- (c) who, with the leave of the court, represents a party in proceedings before that court.

24. Enforcement of orders of a Professional Conduct Committee

Where, under section 20, a lawyer has been ordered by a Professional Conduct Committee to—

- (a) pay any sum, such sum may be recovered as a civil debt, by the Society or the complainant, as the case may be;
- (b) pay any sum, or to apologise to a complainant, and the lawyer has not complied with the order within three months of the date of the Committee's decision, the Council may request the Attorney-General to petition the High Court for a suspension of the lawyer's right to practise in accordance with the provisions of the Admission Rules until such time as the order is complied with.

25. Regulations

- (1) The Attorney-General, acting in accordance with the advice of the Cabinet tendered after consultation with the Council, may make regulations prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.
 - (2) Without limiting the generality of subsection (1), regulations may be made—
 - (a) prescribing forms for the purposes of this Act;
 - (b) prescribing criteria for appointment as Senior Counsel;
 - (c) prescribing the manner in which accounts (including trust accounts) are to be maintained by lawyers;
 - (d) prescribing schedules of fees that may be charged by lawyers;
 - (e) amending the Schedule to this Act.
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SCHEDULE
EXEMPT MEMBERS
(Section 2)

The Attorney-General
Any judicial officer

KIRIBATI LAW SOCIETY ACT 2006**EXPLANATORY MEMORANDUM**

This Bill provides for the establishment of a Kiribati Law Society and for dealing with unprofessional or unethical conduct by any lawyer.

The Bill is divided into four Parts. Part I deals with preliminary matters, including definitions.

Part II establishes the Law Society which, under clause 3, is a body corporate. A lawyer may become a member if he or she so wishes, and provision is made for associate members. The objects of the Law Society are set out in clause 5. An elected Council administers the affairs of the Society, and the Society is required to adopt a set of rules within six months of electing its first Council.

Part III deals with professional conduct of lawyers. The fundamental obligations of lawyers are set out in clause 11 and, under clause 12, the Society is to adopt a Code of Ethics for lawyers. Any complaint alleging a breach of either the fundamental obligations or the Code of Ethics is made to the Council, which is required, if possible, to attempt an amicable resolution of the complaint before proceeding further. Where the Council considers that a formal inquiry should be held, a Professional Conduct Committee is set up to conduct the inquiry, with powers to summon witnesses and order documents to be produced. An inquiry is to be held in accordance with the principles of natural justice. Clause 20 provides for the penalties that a Professional Conduct Committee can impose should the complaint be upheld. A lawyer punished by a Professional Conduct Committee has a right of appeal to the High Court.

Part IV provides for a number of miscellaneous matters, including the appointment of lawyers to the rank of Senior Counsel and the enforcement of orders of a Professional Conduct Committee. There is a specific offence for lay persons acting as lawyers, although persons working as para-legals, or for government, or those representing others with the leave of the court, are protected. Clause 25 deals with the power to make regulations for the effective implementation of the Act.

The Schedule provides for the Attorney-General and any judicial officer to be an exempt member, which relieves them of the requirement to pay fees, and excludes them from the disciplinary provisions of the Bill.

Titabu Tabane
Attorney-General
19 April 2006

**CERTIFICATE OF THE CLERK OF THE MANEABA NI
MAUNGATABU**

This printed impression of the Kiribati Law Society Act 2006 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 23rd November 2006 and is found by me to be a true and correctly printed copy of the said Bill.



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Ioatake Timeon
Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this ^{26th} day
of ~~January~~..... 200~~6~~⁷



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Clerk of the Maneaba ni Maungatabu