

LAWS OF KIRIBATI
REVISED EDITION 1979

CHAPTER 76A

PROCEEDINGS BY AND AGAINST THE REPUBLIC

ARRANGEMENT OF SECTIONS

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SCHEDULE

11 of 1974
26 of 1977

An Ordinance to amend the law relating to the civil liabilities of the Republic and to civil proceedings by and against the Republic, to amend the law relating to the civil liabilities of persons other than the Republic in certain cases involving the affairs or property of the Republic and for matters connected with the matters aforesaid

Commencement: 30th August 1974

PART I

PRELIMINARY

Short title

1. This Ordinance may be cited as the Proceedings by and against the Republic Ordinance.

2. (1) Any reference in this Ordinance to the provisions of this Ordinance shall unless the context otherwise requires include

a reference to rules of court made for the purposes of this Ordinance.

(2) In this Ordinance unless the context otherwise requires—

“agent”, when used in relation to the Republic, includes an independent contractor employed by the Republic;

“civil proceedings” includes proceedings in the High Court or magistrates’ courts for the recovery of fines and penalties but does not include proceedings of a nature such as in England are taken on the Crown side of the Queen’s Bench Division of Her Majesty’s High Court of Justice;

“Government vessel” means any vessel of which the beneficial interest is vested in the Republic, or which is for the time being demised or subdemised to or in the exclusive possession of the Republic;

“officer”, in relation to the Republic, includes any public officer;

“order” includes a judgment, decree, rule, award or declaration;

“prescribed” means prescribed by rules of court;

“proceedings against the Republic” includes any claim by way of set-off or counterclaim raised in proceedings by the Republic;

“rules of court” means rules made by the authority having for the time being the power to make rules and orders regulating the practice and procedure of the High Court or magistrates’ courts as the case may be;

“statutory duty” means any duty imposed by or under any written law.

(3) Any reference in Part IV or Part V to civil proceedings by or against the Republic or to civil proceedings to which the Republic is party shall be construed as including a reference to civil proceedings to which the Attorney-General or any Government department or any public officer as such is a party:

Provided that the Republic shall not for the purposes of Part IV or Part V be deemed to be party to any proceedings by reason only that they are brought by the Attorney-General upon the relation of some other person.

(4) A reference in this Ordinance, in relation to any time before Independence Day, or to any thing occurring or any law in force before Independence Day, to the Crown or to Her Majesty shall be read as a reference to the Sovereign for the time being of the United Kingdom, in right of Her Majesty’s Government in the former Gilbert Islands Colony or the former Gilbert and Ellice Islands Colony, as the case requires.

PART II

SUBSTANTIVE LAW

Right to sue
the Republic

3. Where any person has a claim against the Republic after the commencement of this Ordinance and if this Ordinance had not been enacted the claim might have been enforced, immediately before Independence Day, against the Crown subject to the grant of the Governor's fiat by petition of right, or might have been enforced by a proceeding provided by any statutory provisions ceasing to have effect in Kiribati by virtue of this Ordinance, then subject to the provisions of this Ordinance the claim may be enforced as of right by proceedings taken against the Republic for that purpose in accordance with the provisions of this Ordinance.

Liability of
the Republic
in tort

4. (1) Subject to the provisions of this Ordinance the Republic shall be subject to all those liabilities in tort to which if it were a natural person of full age and capacity it would be subject—

- (a) in respect of torts committed by its servants or agents; and
- (b) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer; and
- (c) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property:

Provided that no proceedings shall lie against the Republic by virtue of paragraph (a) in respect of any act or omission of a servant or agent of the Republic unless the act or omission would apart from the provisions of this Ordinance have given rise to a cause of action in tort against that servant or agent or his estate.

(2) Where the Republic is bound by a statutory duty which is binding also upon persons other than the Republic and Government officers then subject to the provisions of this Ordinance the Republic shall in respect of a failure to comply with that duty be subject to all those liabilities in tort (if any) to which it would be so subject if it were a natural person of full age and capacity.

(3) Where any functions are conferred or imposed upon a Government officer as such either by any rule of the common law or by any written law and that officer commits any tort while performing or purporting to perform those functions the liabilities of the Republic in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Republic.

(4) Any written law which negatives or limits the amount of the liability of any Government department or Government officer in respect of any tort committed by that department or officer shall in the case of proceedings against the Republic under this section in respect of a tort committed by that department or officer apply in relation to the Republic as it would have applied in relation to that department or officer if the proceedings against the Republic had been proceedings against that department or officer.

(5) No proceedings shall lie against the Republic by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.

5. (1) Where after the commencement of this Ordinance any servant or agent of the Republic infringes a patent or infringes a registered trade mark or infringes any copyright (including any copyright in a design subsisting under the Registered Designs Acts, 1949 to 1961 of England as applied to Kiribati by the United Kingdom Designs Protection Ordinance) and the infringement is committed with the authority of the Republic, then subject to the provisions of this Ordinance civil proceedings in respect of such infringement shall lie against the Republic.

Provisions as to industrial property

Cap. 99

(2) Nothing in subsection (1) or in any other provision of this Ordinance shall affect the rights of any Government department under section 46 of the Patents Act, 1949 or section 12 of and the First Schedule to the Registered Designs Act, 1949, both of England.

(3) Save as is expressly provided by this section, no proceedings shall lie against the Republic by virtue of this Ordinance in respect of the infringement of a patent, in respect of the infringement of a registered trade mark or in respect of the infringement of any such copyright as is mentioned in subsection (1).

6. (1) Where the Republic is subject to any liability by virtue of this Part the law relating to indemnity and contribution shall be enforceable by or against the Republic in respect of the liability to which it is so subject as if the Republic were a person of full age and capacity.

Application of law as to indemnity, contribution, joint and several tortfeasors, and contributory negligence

(2) Without prejudice to the effect of subsection (1), Part II of the Law Reform (Married Women and Tortfeasors) Act, 1935 of England (which relates to proceedings against and contribution between joint and several tortfeasors) shall bind the Republic.

1935 c. 41

1945 c. 28

(3) Without prejudice to the general effect of section 3, the Law Reform (Contributory Negligence) Act, 1945 of England (which amends the law relating to contributory negligence) shall bind the Republic.

Liability in
respect of
Government
vessels
1894 c. 60 (as
amended)

7. (1) The provisions of the Merchant Shipping Acts, 1894 to 1967 of England which limit the amount of the liability of the owners of ships or which negative such liability shall with any necessary modifications apply for the purpose of limiting or negating, as the case may be, the liability of the Republic in respect of vessels owned by the Republic; and any provision of the said Acts which relates to or is ancillary to or consequential on the provisions so applied shall have effect accordingly.

(2) Where for the purposes of the provisions of the said Merchant Shipping Acts applied by this section it is necessary to ascertain the tonnage of any ship and that ship is not registered for the purposes of the said Acts the tonnage of the ship shall be taken for the purposes of that enactment to be the tonnage arrived at by—

- (a) ascertaining her tonnage in accordance with regulations made under the Merchant Shipping Act, 1965 of England and deducting from her tonnage as so ascertained 10 per cent thereof; or
- (b) where it is impossible to ascertain her tonnage as provided by paragraph (a), taking her estimated tonnage as certified under subsection (3) for the purposes of this paragraph and deducting from her estimated tonnage as so certified 10 per cent thereof.

(3) Where it is necessary to ascertain the tonnage of a ship in the manner provided by subsection (2) (b) the Marine Superintendent shall upon the direction of the court concerned and after considering such evidence of the dimensions of the ship as it may be practicable to obtain estimate what her tonnage would have been found to be if she could have been duly measured for the purpose and issue a certificate stating her tonnage as so estimated by him.

Liability in
connection
with postal
articles

8. (1) Subject as hereinafter provided no proceedings in tort shall lie against the Republic for anything done or omitted to be done in relation to a postal article by any person while employed as a servant or agent of the Republic or for anything done or omitted to be done in relation to any telephonic communication by any person while so employed, nor shall any public officer be subject except at the suit of the Republic to any civil liability for any of the matters aforesaid.

(2) Proceedings shall lie against the Republic under this subsection in respect of loss of or damage to a registered inland postal article in so far as the loss or damage is due to any wrongful act done or any neglect or default committed by a person employed as a servant or agent of the Republic while performing or purporting to perform his functions as such in relation to the receipt, carriage, delivery or other dealing with the article:

Provided that—

- (a) no proceedings shall lie under this subsection in respect of any postal article registered before the commencement of this Ordinance; and
- (b) the amount recoverable in any proceedings under this subsection shall not exceed the market value of the postal article in question (excluding the market value of any message or information which it bears) at the time when the cause of action arises; and
- (c) the amount recoverable in any such proceedings shall not in any event exceed the maximum amount which under the Post Office Ordinance is available for compensating the persons aggrieved having regard to the fee paid in respect of the registration of the article; and
- (d) the Republic shall not be liable under this subsection in respect of any postal article unless such conditions as are prescribed by the Post Office Ordinance in relation to registered inland postal articles have been complied with in relation to that article.

(3) For the purposes of any proceedings under subsection (2) it shall be presumed until the contrary be shown on behalf of the Republic that the loss of or damage to the postal article was due to some wrongful act done or some neglect or default committed by a person employed as a servant or agent of the Republic while performing or purporting to perform his functions as such in relation to the receipt, carriage, delivery or other dealing with the article.

(4) No relief shall be available under subsection (3) except upon a claim by the sender or addressee of the postal article in question, and the sender or addressee of the article shall be entitled to claim any relief available under the said subsection in respect of the article whether or not he is the person damaged by the injury complained of and to give a good discharge in respect of all claims in respect of the article under the said subsection:

Provided that—

- (a) where the court is satisfied upon an application by any

person who is not the sender or addressee of the article that the sender and the addressee are unable or unwilling to enforce their remedies in respect of the article under the said subsection the court may upon such terms as to security for costs or otherwise as the court thinks just allow that other person to bring proceedings under the said subsection in the name of the sender or addressee of the article; and

(b) any reference in this subsection to the sender or addressee of the postal article includes a reference to his personal representatives.

(5) Where by virtue of subsection (4) any person recovers any money or property which apart from that subsection would have been recoverable by some other person, the money or property so recovered shall be held on trust for that person.

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(6) Regulations may be made under section 36 of the Post Office Ordinance for prescribing the conditions to be observed for the purpose of this section in relation to registered inland postal articles.

(7) In this section—

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“postal article” has the meaning assigned to “postal packet” by section 2 of the Post Office Ordinance, but does not include a telegram or radio-telegram;

“inland postal article” means any article which is posted in Kiribati for delivery in Kiribati to the person to whom it is addressed.

(8) Any reference in this section to a postal article shall be construed as including a reference to the wrapping or container thereof, and the contents therein.

Saving in respect of acts done under prerogative and statutory powers

9. (1) Nothing in this Part shall extinguish or abridge any powers or authorities which if this Ordinance had not been enacted would have been exercisable by virtue of the prerogative of the Republic or any powers or authorities conferred on the Republic or on the Beretitenti or a Minister by the Constitution or any Ordinance, and in particular nothing in this Part shall extinguish or abridge any powers or authorities exercisable by the Republic whether in time of peace or of war for the purpose of the defence of the Republic.

(2) Where in any proceedings under this Ordinance it is material to determine whether anything was properly done or omitted to be done in the exercise of the prerogative of the Republic the Beretitenti may, if satisfied that the act or omission was necessary

for any such purpose as is mentioned in subsection (1), issue a certificate to the effect that the act or omission was necessary for that purpose, and the certificate shall in those proceedings be conclusive as to the matter so certified.

PART III

JURISDICTION AND PROCEDURE

10. (1) All civil proceedings by or against the Republic in the High Court shall be instituted and proceeded with in accordance with rules of court of the High Court. Civil proceedings in the High Court

(2) In this section "rules of court" means, in relation to any claim against the Republic in the High Court which falls within the jurisdiction of that court as a prize court, rules of court made under section 3 of the Prize Courts Act, 1894 of England, or any rules of court made for the purposes of, or relating to, that Act.

11. (1) Subject to the provisions of this Ordinance and to any written law limiting the jurisdiction of magistrates' courts (whether by reference to the subject matter of the proceedings to be brought or the amount sought to be recovered in the proceedings or otherwise), any civil proceedings by or against the Republic may be instituted in a magistrates' court. Civil proceedings in magistrates' courts

(2) Any proceedings by or against the Republic in a magistrates' court shall be instituted and proceeded with in accordance with rules of court applicable to such court.

12. The Republic may obtain relief by way of interpleader proceedings and may be made a party to such proceedings in the same manner in which a subject may obtain relief by way of such proceedings or be made a party thereto, and all rules of court relating to interpleader proceedings shall, subject to the provisions of this Ordinance, have effect accordingly. Interpleader

13. Except where otherwise expressly provided by some other written law, civil proceedings by or against the Republic instituted under the provisions of this Ordinance shall be instituted by or against the Attorney-General. Parties to proceedings

14. No proceedings instituted in accordance with this Part by or against the Attorney-General shall abate or be affected by any change in the person holding the office of Attorney-General. Change of Attorney-General

Service of documents

15. All documents required to be served on the Republic for the purpose of or in connection with any civil proceedings by or against the Republic shall be served upon the Attorney-General or upon such other public officer or Government department as may by any written law be expressly authorised to institute or defend the proceedings in question on behalf of the Republic.

Removal and transfer of proceedings

16. (1) If in a case where proceedings are instituted against the Republic in a magistrates' court an application in that behalf is made by the Republic to the High Court and there is produced to the High Court a certificate of the Attorney-General to the effect that the proceedings may involve an important question of law or may be decisive of other cases arising out of the same matter or are for other reasons more fit to be tried in the High Court, the proceedings shall be removed into the High Court.

(2) Where any proceedings have been removed into the High Court pursuant to subsection (1) and it appears to that court that the removal has occasioned additional expense to the person by whom the proceedings are brought, that court may take account of the additional expense so occasioned in exercising its powers in regard to the award of costs.

(3) Without prejudice to the rights of the Republic under subsection (1), all written laws relating to the removal or transfer of proceedings between magistrates' courts and the High Court shall apply in relation to proceedings against the Republic:

Provided that an order for the transfer to a magistrates' court of any proceedings against the Republic in the High Court shall not be made without the consent of the Republic.

Nature of relief

17. (1) In any civil proceedings by or against the Republic the court shall, subject to the provisions of this Ordinance, have power to make all such orders as it has power to make in proceedings between subjects and otherwise to give such appropriate relief as the case may require:

Provided that—

- (a) where in any proceedings against the Republic any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance the court shall not grant an injunction or make an order for specific performance but may in lieu thereof make an order declaratory of the rights of the parties; and
- (b) in any proceedings against the Republic for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property

but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Republic to the land or property or to the possession thereof.

(2) The court shall not in any civil proceedings grant any injunction or make any order against any Government officer if the effect of granting the injunction or making the order would be to give any relief against the Republic which could not have been obtained in proceedings against the Republic.

18. In any civil proceedings or arbitration to which the Republic is a party the costs of and incidental to the proceedings shall be awarded in the same manner and on the same principles as in cases between subjects and the court or arbitrator shall have power to make an order for the payment of costs by or to the Republic accordingly:

Costs in civil proceedings to which the Republic is a party

Provided that—

- (a) in the case of proceedings to which by reason of any written law or otherwise the Attorney-General is authorised to be made a party the court or arbitrator shall have regard to the nature of the proceedings and the character and circumstances in which the Attorney-General appears and may in the exercise of its or his discretion order any other party to the proceedings to pay the costs of the Attorney-General whatever may be the result of the proceedings; and
- (b) nothing in this section shall affect the power of the court or arbitrator to order, or any written law providing for, the payment of costs out of any particular fund or property or any written law expressly relieving any Government department or Government officer of the liability to pay costs.

19. Subject to the provisions of this Ordinance, all rules of court and other written law relating to appeals and stay of execution shall with any necessary modifications apply to civil proceedings by or against the Republic as they apply to proceedings between subjects.

Appeals and stay of execution

20. (1) Subject to the provisions of this section, any reference in this Part to civil proceedings by the Republic shall be construed as a reference to the following proceedings only:—

Scope of Part III

- (a) proceedings for the enforcement or vindication of any

Schedule

right or the obtaining of any relief which if this Ordinance had not been enacted might have been enforced or vindicated or obtained, immediately before Independence Day, by the Crown by any such proceedings as are mentioned in paragraph 1 of the Schedule; and

- (b) proceedings for the enforcement or vindication of any right or the obtaining of any relief which if this Ordinance had not been enacted might have been enforced or vindicated or obtained by an action at the suit of any Government department or any Government officer as such; and
- (c) all such proceedings as the Republic is entitled to bring by virtue of this Ordinance.

and the expression "civil proceedings by or against the Republic" shall be construed accordingly.

(2) Subject to the provisions of this section, any reference in this Part to civil proceedings against the Republic shall be construed as a reference to the following proceedings only:—

Schedule

- (a) proceedings for the enforcement or vindication of any right or the obtaining of any relief which if this Ordinance had not been enacted might have been enforced or vindicated or obtained, immediately before Independence Day, against the Crown by any such proceedings as are mentioned in paragraph 2 of the Schedule; and
- (b) proceedings for the enforcement or vindication of any right or the obtaining of any relief which if this Ordinance had not been enacted might have been enforced or vindicated or obtained by any action against the Attorney-General, any Government department or any Government officer as such; and
- (c) all such proceedings as any person is entitled to bring against the Republic by virtue of this Ordinance.

and the expression "civil proceedings by or against the Republic" shall be construed accordingly.

(3) Notwithstanding anything contained in subsections (1) and (2), the provisions of this Part shall not have effect with respect to any of the following proceedings:—

- (a) proceedings brought by the Attorney-General on the relation of some other person; and
- (b) proceedings relating to charitable trusts by or against the Attorney-General.

PART IV

JUDGMENTS AND EXECUTION

21. (1) The provisions of any written law relating to the payment of interest on judgment debts in proceedings between subjects shall apply to judgment debts due from or to the Republic. Interest on debts, damages and costs

(2) Where any costs are awarded to or against the Republic in the High Court interest shall be payable on those costs unless the Court otherwise orders, and any interest so payable shall be at the same rate as that at which interest is payable upon judgment debts due from or to the Republic.

(3) The provisions of any written law empowering a court to award interest on debts and damages shall apply to judgments given in proceedings by or against the Republic.

(4) This section shall apply both in relation to proceedings pending at the commencement of this Ordinance and in relation to proceedings instituted thereafter.

22. (1) Where in any civil proceedings by or against the Republic or in any proceedings such as in England are taken on the Crown side of the Queen's Bench Division of Her Majesty's High Court of Justice, or in connection with any arbitration to which the Republic is a party, any order (including an order for costs) is made by any court in favour of any person against the Republic or against a Government department or against a Government officer as such the proper officer of the court shall on an application in that behalf made by or on behalf of that person at any time after the expiration of 21 days from the date of the order or in case the order provides for the payment of costs and the costs require to be taxed at any time after the costs have been taxed, whichever is the later, issue to that person a certificate containing particulars of the order: Satisfaction of orders against the Republic

Provided that if the court so directs a separate certificate shall be issued in respect of the costs, if any, ordered to be paid to the applicant.

(2) A copy of any certificate issued under this section may be served by or on behalf of the person in whose favour the order is made upon the Attorney-General.

(3) If the order provides for the payment of any money by way of damages or otherwise or of any costs the certificate shall state the amount so payable and the Minister of Finance shall, subject as hereinafter provided, pay to the person entitled or to his duly

authorised representative, if any, the amount appearing by the certificate to be due to him together with the interest, if any, lawfully due thereon:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that pending an appeal or otherwise payment of the whole of any amount so payable or any part thereof shall be suspended and if the certificate has not been issued may order any such directions to be inserted therein.

(4) Save as aforesaid no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Republic of any such money or costs as aforesaid and no person shall be individually liable under any order for the payment by the Republic or any Government department or any Government officer as such of any such money or costs.

(5) This section shall apply both in relation to proceedings pending at the commencement of this Ordinance and in relation to proceedings instituted thereafter.

Execution by
the Republic

23. (1) Subject to the provisions of this Ordinance any order made in favour of the Republic against any person in any civil proceedings to which the Republic is a party may be enforced in the same manner as an order made in an action between subjects and not otherwise.

(2) Nothing in this section shall affect any procedure which immediately before the commencement of this Ordinance was available for enforcing an order made in favour of the Crown in proceedings brought by the Crown for the recovery of any fine or penalty or the forfeiture or condemnation of any goods or the forfeiture of any vessel or any share in any vessel, and any such procedure is available for the enforcement of an order made in favour of the Republic in the same way and to the same extent that it was previously so available for enforcing an order made in favour of the Crown.

(3) Subsection (1) shall apply both in relation to proceedings pending at the commencement of this Ordinance and in relation to proceedings instituted thereafter.

Attachment
of moneys
payable by
the Republic

24. (1) Where any money is payable by the Republic to some person who under any order of any court is liable to pay any money to any other person and that other person would if the money so payable by the Republic were money payable by a subject be entitled under rules of court to obtain an order for the attachment thereof as a debt due or accruing due, or an order for

the appointment of a sequestrator or receiver to receive the money on his behalf, the High Court may, subject to the provisions of this Ordinance and in accordance with rules of court, make an order restraining the first mentioned person from receiving that money and directing payment thereof to that other person or to the sequestrator or receiver:

Provided that no such order shall be made in respect of—

- (a) any wages or salary payable to any Government officer as such; or
- (b) any money which is subject to the provisions of any written law prohibiting or restricting assignment or charging or taking in execution.

(2) The provisions of subsection (1) shall so far as they relate to forms of relief falling within the jurisdiction of a magistrates' court have effect in relation to that court as they have effect in relation to the High Court.

PART V

MISCELLANEOUS AND SUPPLEMENTAL

25. (1) Subject to and in accordance with rules of court— Discovery
- (a) in any civil proceedings in the High Court or a magistrates' court to which the Republic is a party the Republic may be required by the court to make discovery of documents and produce documents for inspection; and
 - (b) in any such proceedings as aforesaid, the Republic may be required by the court to answer interrogatories:

Provided that this section shall be without prejudice to any rule of law which authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

(2) Any order of the court made under the powers conferred by subsection (1) (b) shall direct by what Government officer the interrogatories are to be answered.

(3) Without prejudice to the proviso to subsection (1), any rules made for the purposes of this section shall be such as to secure that the existence of a document will not be disclosed if in the opinion of the Beretitenti it would be injurious to the public interest to disclose the existence thereof.

Exclusion of proceedings *in rem* against the Republic

26. (1) Nothing in this Ordinance shall authorise proceedings *in rem* in respect of any claim against the Republic or the arrest, detention or sale of any vessel, aircraft, cargo or other property belonging to the Republic or give to any person any lien on any such vessel, aircraft, cargo or other property.

(2) Where proceedings *in rem* have been instituted in any court against any vessel, aircraft, cargo or other property belonging to the Republic the court may if satisfied either on an application by the plaintiff for an order under this subsection or an application by the Republic to set aside the proceedings that the proceedings were so instituted by the plaintiff in the reasonable belief that the vessel, aircraft, cargo or other property did not belong to the Republic order that the proceedings shall be treated as if they were *in personam* duly instituted against the Republic in accordance with the provisions of this Ordinance or duly instituted against any other person whom the court regards as the proper person to be sued in the circumstances and that the proceedings shall continue accordingly; and any such order may be made upon such terms, if any, as the court thinks just and where the court makes any such order the court may make such consequential orders as the court may think expedient.

Limitation of actions

27. Nothing in this Ordinance shall prejudice the right of the Republic to rely upon the law relating to the limitation of time for bringing proceedings against public authorities.

Application to the Republic of certain written laws

28. (1) This Ordinance shall not prejudice the right of the Republic to take advantage of the provisions of any written law although not named therein; and it is hereby declared that in any civil proceedings against the Republic the provisions of any written law which could if the proceedings were between subjects be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may subject to any express provision to the contrary be so relied upon by the Republic.

(2) Any rules of court which empower the court to order a defendant who is about to leave the jurisdiction of the court to furnish security shall with any necessary modifications apply to civil proceedings by the Republic.

Abolition of certain writs

29. No writ of extent or of *diem clausit extremum* shall issue after the commencement of this Ordinance.

Rules of court

30. (1) Subject to section 97 of the Constitution, any power to make rules of court shall include power to make rules for the

purpose of giving effect to the provisions of this Ordinance, and any such rules may contain provisions to have effect in relation to any proceedings by or against the Republic in substitution for or by way of addition to any of the provisions of the rules applying to proceedings between subjects.

(2) Provision shall be made by rules of court with respect to the following matters:—

- (a) for providing for service of process or notice thereof in the case of proceedings by the Republic against persons who are not resident in Kiribati; and
- (b) for securing that where any civil proceedings are brought against the Republic in accordance with the provisions of this Ordinance the plaintiff shall before the Republic is required to take any step in the proceeding provide the Republic with such information as the Republic may reasonably require as to the circumstances in which it is alleged that the liability of the Republic has arisen and as to the departments and Government officers concerned; and
- (c) for providing that in the case of proceedings against the Republic the plaintiff shall not enter judgment against the Republic in default of appearance or pleading without the leave of the court to be obtained on an application of which notice has been given to the Republic; and
- (d) for excepting proceedings brought against the Republic from the operation of any rule of court providing for summary judgment without trial; and
- (e) for enabling evidence to be taken on commission in proceedings by or against the Republic; and
- (f) for providing—
 - (i) that a person shall not be entitled to avail himself of any set-off or counterclaim in any proceedings by the Republic for the recovery of taxes, duties or penalties or to avail himself in proceedings of any other nature by the Republic of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties; and
 - (ii) that a person shall not be entitled without the leave of the court to avail himself of any set-off or counterclaim in any proceedings by the Republic if either the subject matter of the set-off or counterclaim does not relate to the Government department in the name of which the proceedings are

brought or the proceedings are brought in the name of the Attorney-General; and

- (iii) that the Republic when sued in the name of a Government department shall not without the leave of the court be entitled to avail itself of any set-off or counterclaim if the subject matter does not relate to that department; and
- (iv) that the Republic when sued in the name of the Attorney-General shall not be entitled to avail itself of any set-off or counterclaim without the leave of the court.

(3) Provision may be made by rules of court for regulating any appeals to the High Court whether by way of case stated or otherwise under written laws relating to revenue.

Savings

31. (1) Except as therein otherwise expressly provided nothing in this Ordinance shall—

- (a) affect the law relating to prize salvage or apply to proceedings in causes or matters within the jurisdiction of any court as a prize court or to any criminal proceedings; or
- (b) subject the Republic to any greater liabilities in respect of the acts or omissions of any independent contractor employed by the Republic than those to which the Republic would be subject in respect of such acts or omissions if it were a private person; or
- (c) affect any rules of evidence or any presumption relating to the extent to which the Republic is bound by any written law; or
- (d) affect any right of the Republic to demand a trial at bar or to control or otherwise intervene in proceedings affecting its rights, property or profits; or
- (e) affect any right of the Attorney-General, or any Government department or any Government officer as such to institute proceedings under or in accordance with the provisions of any other written law.

(2) Subject to sections 9, 10 and 11 of the Independence Order, where any property vests in the Republic by virtue of any rule of law which operates independently of the acts or the intentions of the Republic, the Republic shall not by virtue of this Ordinance be subject to any liabilities in tort by reason only of the property being so vested; but this subsection shall be without prejudice to the liabilities of the Republic under this Ordinance in respect of any period after the Republic or any person acting for

the Republic has in fact taken possession or control of any such property, or entered into occupation thereof.

(3) This Ordinance shall not operate to limit the discretion of the High Court to grant relief by way of mandamus in cases in which such relief might have been granted before the commencement of this Ordinance notwithstanding that by reason of the provisions of this Ordinance some other and further remedy is available.

SCHEDULE

(Section 20)

1. (1) Latin informations and English informations.
(2) Writs of *capias ad respondendum*, writs of *subpoena ad respondendum* and writs of appraisement.
(3) Writs of *scire facias*.
(4) Proceedings for the determination of any issue upon a writ of extent or of *diem clausit extremum*.
2. (1) Proceedings against Her Majesty by way of petition of right, including proceedings by way of petition of right under section 52 of the Naval Prize Act 1864 c. 25 1864.
(2) Proceedings against Her Majesty by way of *monstrans de droit*.

REPUBLIC OF KIRIBATI
(No. 7 of 1996)

I assent,

Tebur
Beretitenti

08/01/1996

**AN ACT TO AMEND THE PROCEEDINGS BY AND AGAINST THE REPUBLIC
ORDINANCE (Cap 76A)**

Commencement:
1996

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

Short title

1. This Act may be cited as the Proceedings by and against the Republic (Amendment) Act 1996.

Insertion of new section 4A

2. Section 4 of the Proceedings by and against the Republic Ordinance is amended by inserting a new section between section 4 and section 5 as follows:-

"Liability of the Republic in contracts and leases

4A. (1) Subject to subsection (2) and except as otherwise provided by written law (whether passed or made before or after the commencement of this section), no proceedings shall lie against the Republic in contract upon any agreement unless the agreement -

(a) has been recorded in writing;

(b) has been approved in writing by the Beretitenti, acting in accordance with the advice of the Cabinet; and

(c) signed on behalf of the Republic by,

(i) the Beretitenti, or

(ii) the Minister for the time being responsible for the matter to which the agreement relates.

(2) Subsection (1) does not apply in relation to -

- (a) a contract under which the Republic is to pay or receive an amount less than \$10,000 or, if a higher amount is prescribed by regulation made by the Beretitenti, acting in accordance with the advice of the Cabinet, that higher amount; or
- (b) a lease or sublease of land for a period not exceeding 2 years."
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