

REPUBLIC OF KIRIBATI



(No. ... of 2025)

I assent


Beretitenti

18 / 19 / 2025

An Act

entitled

AN ACT TO AMEND THE STATE OWNED ENTERPRISES ACT 2013

Commencement

1 / 2025

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

1. Short title

This Act may be cited as the *State-Owned Enterprises (Amendment) Act 2025*.

2. Meaning of 'Principal Act'

In this Act the Principal Act means the *State-Owned Enterprises Act 2013*.

3. Amendment of Section 3

Section 3 is amended by inserting a new definition of “Chairperson” between the words “board” and “controlled SOE” as follows:

“Chairperson” means a Chairperson of an SOE appointed under this Act by the responsible Minister in respect of an SOE. This include any other directors within the Board who have been appointed by the Chairperson to act on his behalf in his absence.

4. Amendment of Section 4

Section 4 is amended as follows:

- (1) Section 4(1) is amended by deleting the whole subsection and substituting the following:

“4(1) Entities that are owned by the Government and listed in the First Schedule are considered SOEs and are subject to this Act.”

- (2) Section 4(2) is amended by deleting the whole subsection and substituting the following:

“4(2) A subsidiary of any entity that is listed in the First Schedule and is an SOE is also considered an SOE for the purposes of this Act.”

- (3) Section 4(3) is amended by repealing the whole subsection and substituted with the following;

“4(3) This section does not apply to entities that are owned by the Government and declared by Order of the Beretitenti, acting in accordance with the advice of the Cabinet, not to be an SOE.”

5. Amendment of Section 5

Section 5(4)(c) is amended by repealing the whole paragraph and substituting the following:

“5(4)(c) an impartial selection process for employing suitably qualified employees; and”

6. Amendment of Section 6

Section 6 is amended as follows:

- (1) In subsection (1) by repealing the whole subsection and substituting the following:

“6(1) The Government may require an SOE to perform a CSO in respect of any class of persons, or generally, in accordance with this section with the approval of the Cabinet, give an SOE a written proposal (a “CSO proposal”) that the SOE;

- (a) provide a specified service or perform specified activities; or
- (b) cease providing a specified service or cease performing specified activities.”

- (2) In subsection (3) by repealing the whole subsection and substituting with the following;

“6(3) An agreement under subsection (2) must:

- (a) be in writing;
- (b) specify the type, quantity and quality of the goods and services to be provided or make available;
- (c) specify the price to be paid by the Government or the means of determining that price;
- (d) include an estimate of the total cost of providing the goods or services to the SOE, and an estimate of the revenues to be received by the SOE for doing so, each on an annual basis; and
- (e) specify how the performance of the SOE in providing the goods or services will be monitored and assessed.”

- (3) In subsection (4) by deleting the whole subsection and substituting the following:

“6(4) An SOE must not fail or refuse to perform a CSO unless performance of the CSO is in breach of the Constitution or the laws of Kiribati however if the

performance of the CSO is not fully compensated or under-funded under a CSO agreement an SOE is required to report this fact in each of its SOI, HYR and AR with the details of the CSO performed, the CSO agreement funding and the shortfall in CSO compensation and a comment as to whether the performance of an under-funded CSO activity will compromise its principal objectives.”

7. Amendment of section 9

Section 9(2) is amended by repealing the whole subsection and substituting the following:

“9(2) If an SOE that is not a company is subject to another Act in respect of the appointment and conduct of its directors or in respect of voting rights, then this Act prevails over that other Act in respect of those matters.”

8. Amendment of section 14

Section 14 is amended by repealing the whole of subsection (4) and substituting the following;

“14(4) The Chairperson of the Board of each SOE, should act in the best interests of the SOE and is to be held accountable for such an action or omission which constitute any breach of this section.”

9. Amendment of section 15

Section 15 is amended by repealing the whole section and substituting the following:

“15(1) All decisions relating to the governance and operation of an SOE are to be made by, or under delegated authority of, the Board, who must act:

- (a) in accordance with the SOE’s articles and SOI; and
- (b) to satisfy the principal objective in section 5.

15(2) The Board of an SOE may, subject to this section, by resolution, delegate to any Director, the CEO, any staff member or any subsidiary of the SOE any of its powers and functions, but not this power of delegation.”

10. Insertion of new section 15A, 15B, and 15C

“15A Director’s indemnities

- (1) A State-Owned Enterprise must not:
 - (a) exempt a director of the SOE from a liability owed to it as a director of the SOE; and
 - (b) indemnify a director in respect of a liability owed to a subsidiary of it, as such a director; or except as permitted by subsection (3) – indemnify a director in respect of a liability owed to a person other than the SOE or a subsidiary of the SOE.
- (2) A subsidiary of a State-Owned Enterprise must not:
 - (a) exempt a director of the subsidiary from a liability owed to it as a director of a subsidiary; or
 - (b) indemnify a director of a subsidiary in respect of a liability owed to it, to another subsidiary of the SOE or to the SOE, as such a director; or
 - (c) indemnify a director of the SOE, or of another subsidiary of the SOE, in respect of a liability owed to it, to another subsidiary of the SOE or to the SOE, as such a director, or except as permitted by subsection (3) – indemnify a director in respect of a liability owed to a person other than the SOE or a subsidiary of the SOE.
- (3) An SOE or a subsidiary of an SOE may, with a written approval of the Minister, indemnify a director of the SOE or subsidiary in respect of the director’s liability to a person other than the SOE or subsidiary of the SOE if (but only if);
 - (a) the liability arose out of an act or omission of the director acting in that capacity; and
 - (b) the act or omission was done in good faith and with due care.
- (4) This section extends to the executive officers of the SOE.

15B Disclosure of interest

- (1) Each director of a state-owned enterprise or a subsidiary of a state-owned enterprise must disclose in writing to each other director of the state-owned enterprise or subsidiary all interests that director has that could conflict with the proper

performance of the functions of his or her office. The disclosure must be given as soon as practicable after the director becomes aware of the interest.

- (2) A director of a state-owned enterprise or a subsidiary of a state-owned enterprise who has an interest in relation to a particular matter that could conflict with the proper performance of the functions of his or her office must not perform those functions unless the director has complied with subsection (1) in relation to the interest, and each of the other directors of the state-owned enterprise or subsidiary has consented to the director performing those functions in relation to the matter despite the possible conflict of interest.
- (3) For subsections (1) and (2), it does not matter whether an interest is direct, indirect, pecuniary or non-pecuniary, and it does not matter when the interest was acquired.
- (4) For the purposes of this section, the director is taken to have an interest, and this section applies accordingly if:
 - (a) a related party of a director has an interest, and
 - (b) if the director had the interest it could conflict with the proper performance of the functions of his or her office.
- (5) In subsection (4), “related party” of a director means any of the following
 - (a) a spouse, child or parent of the director;
 - (b) a corporation or company (other than the state-owned enterprise) of which the director is a director or executive officer, and a subsidiary of such a corporation or company;
 - (c) a corporation or company of which a spouse, child or parent of the director is a director or executive officer;
 - (d) if the director, or a spouse, child or parent of the director, owns, or controls the exercise of votes attached to, more than the percentage prescribed by the regulations of shares of a corporation or company – the corporation or company;
 - (e) if the director and another person are parties to a contract, arrangement or understanding, whether formal or informal, written or not and whether or not enforceable;
 - (i) to acquire, hold, sell or otherwise deal in shares or other securities in concert; or
 - (ii) to exercise voting rights in a specified body corporate in concert”

15C Codes of Conduct

- (1) The Board of SOE must formulate a code of conduct for the SOE, and must review the code and its operation at least once every 3 years.
- (2) A code of conduct shall:
 - (a) be consistent with this Act and other written laws; and
 - (b) make provisions for at least the following matters:
 - (i) standards of conduct of directors and employee;
 - (ii) actively promoting ethical behaviour and encouraging reporting of unlawful or unethical behaviour;
 - (iii) the circumstances in which directors and employees may accept gifts and other benefits, including reporting and recording them;
 - (iv) the use by directors and employees of the state-owned enterprises resources, including phones, cars and other property;
 - (v) business travel, including its relationship to personal travel;
 - (vi) conflicts of interests, including procedures for identifying, reporting and resolving them;
 - (vii) managing breaches of the code, including monitoring compliance and reporting breaches;
 - (viii) the use and disclosure of information by directors and employees;
 - (ix) reducing or eliminating improper influence on directors and employees in carrying out their functions as directors and employees of the SOE;
 - (x) trading in and ownership of securities or other financial instruments by directors and employees.
- (3) Each director of the SOE, and each employee of the SOE, must comply with the code of conduct as it applies to him or her. Failure to comply with the code of conduct is not an offence.”

11. Amendment of Section 16

Section 16 (1) is amended by repealing the word “Chairman” and substituting with “Chairperson”.

12. Amendment to Section 17

Section 17 is amended as follows:

(1) In subsection (1):

(a) by deleting the word “and” at the end of paragraph (a);

(b) by deleting the “full stop” and substituting with the “semi-colon” at the end of paragraph (b);

(c) by inserting new paragraphs (c) and (d) immediately after paragraph (b) which shall read as follows:

“(c) the appointed person to have clean police record or no previous criminal record; and

(d) the appointed person to have clean disciplinary record with the Public Service Commission (PSC) on mismanagement of funds or termination.”

(2) By inserting new subsections (7) and (8) which shall read as follows:

“17(7) Directors may be appointed by the responsible Minister for a term not exceeding 4 years.

17(8) The appointment of a new director should be including confirmation that the director understands his or her duties under this Act.”

13. Amendment of section 20

Section 20 is amended as follows:

(1) In paragraph (1)(b) by repealing the whole paragraph and substituting it as follows:

“20(1)(b) Audited consolidated financial statements for the financial year consisting of:

- (i) statements of financial performance;
- (ii) statements of financial position;

- (iii) financial statements in accordance with accounting standards consistent with those indicated; and
- (iv) any other necessary statements.”

(2) By inserting a new subsection (3) as follows:

“20(3) Every report under subsection (1) must include a Chairperson’s declaration in a format as directed by the Regulations and the SOEMAU under section 29.”

14. Amendment of section 24

Section 24(1) is repealed and substituted as follows:

“24(1) The Responsible Ministers must table to the Maneaba ni Maungatabu the following documents from each SOE not later than the first sitting day of the next session after they are received:

- (a) the Statement of Intent (SOI); and
- (b) the Annual Report.”

15. Insertion of a new section 37

A new section 37 is inserted and shall read as follows:

37. Power to make Regulations

“37 The Responsible Minister(s) may, with the consent of the Cabinet make regulations for the proper and efficient administration of this Act.”

EXPLANATORY MEMORANDUM

The primary objective of the **State-Owned Enterprises (Amendment) Act 2025** is to enhance governance, accountability, financial transparency, and operational efficiency within State-Owned Enterprises (SOEs) in Kiribati. These amendments aim to align SOE management with international best practices, ensuring that public resources are effectively utilized for sustainable economic growth.

The amendments introduce several key provisions:

1. **Section 3:** Introduces a definition for "Chairperson" to clarify accountability, ensuring that both the Chairperson appointed by the Responsible Minister and any director in charge are responsible for endorsing statutory reports.
2. **Section 4:**
 - Section 4(1): Clarifies the definition of SOEs by linking their status to government ownership and listing in the First Schedule
 - Section 4(2): Ensures subsidiaries are subject to the same governance and transparency requirements.
 - Section 4(3): Gives Te Beretitenti, with the advice of Cabinet, the power by order to declare entities that are not SOEs.
3. **Section 5(4)(c):** Clarifies recruitment standards of mandating merit-based selection.
4. **Section 6:**
 - Section 6(1): Clarifies the government's authority to require SOEs to undertake CSOs.
 - Section 6(3): Requires cost estimates, revenue projections, and performance monitoring for CSO proposals to ensure financial discipline and accountability.
 - Section 6(4): Mandates reporting of CSO funding shortfalls in the Statement of Intent (SOI), Half-Yearly Report (HYR), and Annual Report (AR) to enhance transparency.
 -

5. **Section 9(2):** Reinforces SOEs' principal objectives in managing conflicts between government interests and SOE performance.

6. **Section 14(4):** Holds the Board Chairperson accountable for statutory breaches.

7. **Section 15:**

- **Section 15(1):** Reinforces the alignment of SOEs' governance and operations with their Articles of Incorporation, Statement of Intent (SOI), and principal objectives.
- **Section 15(2):** Expands the requirements to cover elaborates more on any delegated authority.
- **Section 15A (Directors' Indemnities):** Prohibits SOEs from exempting or indemnifying directors and CEOs against liabilities without Ministerial approval. Ensures accountability, prevents misuse of SOE funds, and strengthens public trust in SOE governance.
- **Section 15B (Disclosure of Interest):** Requires directors to disclose conflicts of interest, including related parties, and prohibits conflicted actions without board consent.
- **Section 15C (Codes of Conduct):** Mandates SOEs to adopt and review codes of conduct covering ethical behavior, conflicts of interest, and responsible resource use.

8. **Section 16 (1):** Revises terminology within the Act by replacing "Chairman" with "Chairperson" to promote inclusivity and gender-neutral language.

9. **Section 17:**

- 17(1)(c): Introduces eligibility criteria, including no previous criminal record; and
- 17(1)(d): Includes clean disciplinary record or termination with PSC
- 17(7): Introduces the four-year term limits for ministerial appointees
- 17(8): Requires confirmation of directors' understanding of their duties.

10. **Section 20:**

- 20(1)(b): Strengthens financial accountability by requiring adhering to accounting standards consistent with those indicated in the Public Finance Act,

- 20(3): Requires a Chairperson to include declaration in every report.

11. **Section 24:** Enhances legislative oversight by requiring Responsible Ministers to table only the SOEs' SOIs and Annual Reports at the first available session of Maneaba ni Maungatabu (excluding Half-Yearly Reports).

12. **New Section 37 (Power to make Regulations):** Grants the Responsible Minister, with Cabinet approval, authority to enact regulations for effective implementation of the Act.

These amendments collectively reinforce governance, financial integrity, and transparency, ensuring that SOEs operate efficiently and deliver public services effectively.

Hon DR TEUEA TOATU

Vice President and Minister for Finance

LEGAL REPORT

I hereby certify that in my opinion none of the provisions of the above Act are in conflict with the Constitution and that the Beretitenti may properly assent to the Act.

Ms PAULINE BEIATAU

Attorney General

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

This printed impression of the State-Owned Enterprise (amendment) Act 2025 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 14th August 2025 and is found by me to be a true and correctly printed copy of the said Bill.



.....
Eni Tekanene
Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this 18th day
of September 2025.



.....
Eni Tekanene
Clerk of the Maneaba ni Maungatabu