

REPUBLIC OF KIRIBATI
(No. of 2019)



I assent,

Beretitenti

24/12/2019

An Act
entitled

An Act to amend the Phoenix Islands Protected Area Conservation Trust Act 2009

Commencement:
2019

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

1. Short Title

This Act may be cited as the *Phoenix Islands Protected Area Conservation Trust (Amendment) Act 2019*.

2. Meaning of 'principal Act'

In this Act the principal Act means the *Phoenix Islands Protected Area Conservation Trust Act 2009*.

3. Insertion of Preamble

A new Preamble is hereby inserted immediately after section 2 and shall read as follows:-

"We the people of Kiribati acknowledge the contribution and support of the following founder members of the Phoenix Islands Protected Area Conservation Trust;

- i. The Government;
- ii. Conservation International Foundation, a non-profit corporation established under the laws of California, United States of America, with a principal place of business at the time of adoption of the Act at 2011 Crystal Drive, Suite 600, Arlington, Virginia 22202, United States of America; and

- iii. New England Aquarium, a non-profit corporation established under the laws of Massachusetts, United States of America, with a principal place of business at the time of adoption of this Act at Central Wharf, Boston, Massachusetts 02110, United States of America.”

4. Amendment of section 3

Section 3 is amended as follows:-

(a) by deleting the following definitions: ‘Conservation International’, ‘Founder Member’ and ‘New England Aquarium’;

(b) by deleting the word ‘founder members’ in the third line of the definition of ‘special majority vote’ and substituting the words “contributing members or owner”;

(c) by inserting a new definition immediately before ‘Conservation International’ as follows-

“court” means the High Court of Kiribati;

(d) by inserting a new definition immediately after ‘Conservation Contract’ as follows-

“Contributing member” means any organization or entity that has been accorded the status as contributing member in accordance with the conditions as prescribed by by-laws adopted by the Trust, provided moreover that Conservation International and the Government are hereby designated as contributing members by operation of this Act;

(e) by inserting a new definition immediately before ‘Phoenix Islands Protected Area’ as follows-

“Minister” means the Minister for the time being responsible for the administration of this Act;

(f) by inserting a new definition immediately before ‘Phoenix Islands Protected Area’ as follows-

“owner” means the Government as owner of the Phoenix Islands Protected Area, as trustee for and on behalf of the people of Kiribati;

(g) by inserting a new definition immediately after ‘Phoenix Islands Protected Area’ as follows-

“PIPA Management Committee” means the committee established by the Minister pursuant to section 46 of the Environment Amendment Act 2007”.

5. Section 10 is amended as follows:

(a) by repealing subsection 2(a) and substituting the following- “subject to subsection (3), a Director appointed by the owner and each of the contributing members;

(b) in subsection 3 by deleting the words ‘founder member’ in the first line and substituting the words “contributing member”; and

(c) by inserting a new subsection after subsection (4) and reads as follows-

“(5) A contributing member shall forfeit its rights as contributing member in the event of failure to comply with any conditions as prescribed by the by-laws adopted by the Trust, provided such member shall be given written notice of such failure and be provided twenty (20) business days from receipt of such notice to correct such failure.”

6. Amendment of section 11

Section 11(1) is amended by replacing the words 'founder member' in the first paragraph and substituting the following words, "owner or contributing member".

7. Amendment of section 15

Section 15 is amended as follows:-

(a) by repealing subsection 3 and substituting the following:-

"15(3) In the event that the seat of a Director appointed by the owner or contributing member is vacant, the Board shall have no power to act during the period beginning on the date such vacancy arises and ending on the earlier of either-

(a) the day 10 business days thereafter lapse; or

(b) the day the vacancy is filled by the owner or applicable contributing member, following which the powers of the Board shall be fully reinstated, notwithstanding a continuing vacancy, if any".

(b) by repealing subsection (4)

(c) in subsection (5) by replacing the word "may" in the first paragraph and substituting the word "shall";

(d) in subsection (6) by deleting the words "this power of delegation and";

(e) by deleting subsection (7)(c);

(f) by inserting a new subsection (f) after subsection 8 (e) to read as follows:-

8(f) "approve any amendment to the by-laws".

8. Amendment of section 17

Section 17 is amended as follows:

(a) by repealing the title and substituting the following: "Limited Liability of Directors, officers, owner and contributing members";

(b) by deleting the words 'founder member' in the first line and third line of subsection 3 and substituting the words "contributing member or owner";

(c) by inserting the following new subsections after subsection 3 as follows-

"17 (4) In the event where the Director's or officer's liability have arisen out of any of the circumstances set forth in subsection (1)(a),(b) and (c), such Director or officer shall be liable to compensate the Trust for any damage it suffers; shall account to the Trust for any profit made by him as a result of such breach; and the Trust may rescind any contract or other transaction entered into between the Trust and such Director or officer.

17(5) Proceedings to enforce any liability referred to in subsection (4) or to restrain a threatened breach of any of the directors', officers' or employees duties or to recover any assets of the Trust transferred to or held by a director, officer, or employee in breach of such duties may be instituted

by the Owner, the Trust or any contributing member.

17(6) No period of limitation conferred by statute shall apply to any proceedings under this section and no provision, whether as prescribed, operational manuals of the Trust or any contract, shall relieve a director, officer, or employee from any liability for any breach of his duties under this Act, but the Court may relieve a director, officer, or employee from liability in whole or part and on such terms as it thinks proper if, in all the circumstances including lapse of time, the Court thinks it is equitable to do so".

9. Amendment of section 19

Section 19 is amended by deleting the words 'founder member' in the first paragraph and substituting the words "contributing member or owner".

10. Amendment of section 22

Section 22 is amended as follows:

(a) in subsection 1 (h) by inserting the words "and from fundraising activities carried out" between the words 'provided' and 'by';

(b) in subsection 2 by inserting the words 'and the owner' at the end of the last sentence;

(c) by inserting the following new subsections after subsection 2:-

"22 (3) Any financial donations, contributions, or aid that are accepted by the Board in accordance with this Act shall be governed by a grant agreement and the Trust shall provide notice in writing to the owner before entering into any such agreements.

22 (4) Subject to 22(5), the Trust is granted exclusive right to carry out any fund raising activities for and in the name of the Phoenix Islands Protected Area;

22 (5) Any organization other than the Trust or the owner, which intends to carry out any such fund raising activities, shall seek prior approval in writing from the Trust and comply with any other conditions as prescribed in the by-laws.

11. Amendment of section 24

Section 24 is amended as follows:

(a) by repealing subsections (2) and (3) and substituting the following:- "24(2)The budget shall include the costs of the primary activity, provided costs for activities under section (6) (1) (b) and (c) have been endorsed by the PIPA Management Committee.

24(3) In addition to any other pertinent matters, the budget may also include the costs for secondary activity, which have been endorsed by the owner, and provided that doing so could not reasonably be expected to materially impair the Trust's ability to achieve its primary activity.

(b) In subsection 4(d) by inserting the words 'financial commitments' of contributing members' among the factors which the Board must take into consideration as to whether or not the budget presented for the Board's consideration is sustainable or otherwise after the word inflation;

(c) by inserting a new subsection (5) as follows:-

(5) In the event where there is a shortfall in the Trust's readily available assets or funds to cater for the budget, which has been approved by the Board, the Board shall take the necessary actions to source additional funds to meet the shortfall from any or all of the following sources:-

- (a) outstanding financial commitments from any of the contributing members who have failed to discharge such commitments without any justifiable cause;
- (b) draw-downs from funds invested by the Trust subject to specific investment guidelines adopted by the Board in accordance with the by-laws: or
- (c) any other legitimate sources.

12. Amendment of section 25

Section 25 is repealed and substituting the following new section:-

25 "(1) The Trust shall keep proper accounts and other records in respect of its operations, including all monies received and expended, monies invested and foreign exchange accounts and shall, not later than the 31st day of March each year, cause a statement of accounts to be prepared in respect of the preceding financial year.

(2) The annual statement of accounts of the Trust shall present a true and fair view of the financial position of the Trust and of the results of the operations of the Trust, including all monies received and expended, monies invested and foreign exchange accounts for the year to which it relates;

(3) The accounts of the Trust shall be audited annually by the Auditors nominated by the Board".

13. Insertion of new section 25A

A new section 25A is inserted immediately after section 25 as follows:-

"25A. Statement of accounts and annual report

(1) As soon as practicable after the end of each financial year, but not later than the 31st May or such later date as the Minister may approve, the Trust shall transmit to the Minister-

- (a) a copy of the statement of accounts;
- (b) a copy of the report made thereon or on the accounts of the Trust by the Auditors nominated in accordance with section 25(3); and
- (c) a report containing details of the activities of the Trust during that year.

(2) The Minister shall cause copies of the accounts and reports to be printed and laid before the Maneaba ni Maungatabu as soon as practicable thereafter.

14. Amendment of section 26

Section 26 (2)(b) is deleted and section 22(2)(a) is amended by repealing it and substituting the following:

"The Conservation Contract and any subsequent amendment thereto shall be tabled at the next meeting of the Maneaba ni Maungatabu following the entering into force of such Contract or any

subsequent amendments thereto".

THE PHEONIX ISLANDS PROTECTED AREA CONSERVATION TRUST (AMENDMENT) ACT 2019
EXPLANATORY MEMORANDUM

This Act amends the Phoenix Islands Protected Area Conservation Trust Act 2009, (the Principal Act), in an effort to address the issues that have emerged over the nine years since the principal Act has been in force.

Section 3 inserts a new preamble to acknowledge the contribution and support of the founding members of the Phoenix Islands Protected Area (PIPA), New England Aquarium (NEAq), Government of Kiribati (GoK), and Conservation International (CI), following the voluntary withdrawal of NEAq.

Section 4 amends section 3 of the Principal Act by repealing the definitions of ‘founder member’, NEAq, and CI to formalize the voluntary withdrawal of NEAq.

It also inserts the following new definitions:-

‘contributing member’ and ‘owner’ to fill in the lacuna created by the repeal of the definition of ‘founder member’ and to substitute the words ‘founder member’;

‘court’ clarifying that the High Court is the court to deal with cases arising from this Act;

‘Minister’ to ensure clarity as to which Minister is referred to in section 30 (b), given that word ‘Minister’ is not currently defined in the Principal Act;

‘owner’ to accord recognition to the right of the Government of Kiribati, as owner of PIPA, in trust for and on behalf of the people of Kiribati; and

‘PIPA Management Committee’ as established under Environment Amendment Act 2007.

Section 5 amends section 10 of the Principal Act by repealing subsection 2(a) and substituting it with a new subsection subject to subsection 3, showing that a Director appointed by the owner and each of the contributing members it also inserts a new subsection (4) that deals with a situation which will give rise to automatic forfeiture of the contributing member’s right as such.

Section 6 amends section 11 by repealing the words ‘founder member’ in the first paragraph and substituting the following words “owner or contributing member).

Section 7 amends section 15 of the Principal Act by restructuring subsection (3), to improve clarity; by substituting the word ‘may’ with ‘shall’ in subsection (5) to ensure the Board is mandatorily obliged not to delegate powers and duties set out under this subsection; by amending subsections (7) and (8) to ensure that the approval of any amendments to the Trust by-laws requires ‘special majority vote’ which includes unanimous affirmative vote of all Directors appointed by the ‘owner’ and ‘financial donors’.

Section 8 amends section 17 of the Principal Act by repealing the title and substituting the words “Limited Liability of Directors officers, owner and contributing members” to reflect the repeal of the definition of ‘founder member’. It also amends same section by inserting new subsections (4), (5) and (6) to ensure that Directors or officers are answerable and held accountable for their misconduct set forth in subsections 1(a), (b) and (c). This relates to misconduct arising out of bad faith; constitute fraud or

willful misconduct; or from which the Director or officer derived an improper benefit.

Section 9 amends section 19 of the Principal Act by deleting the words ‘founder member’ in the first line of subsection 3 and substituting the words “contributing member or owner”.

Section 10 amends section 22 of the Principal Act by including the proceeds of fundraising activities carried out by the Trust as one of the sources of revenue in subsection 1(h). It also inserts a new subsection (3) to ensure that the Trust, given its role as the financial arm of PIPA is granted exclusive right to carry out all fundraising activities for and in the name of PIPA, and a new subsection (3) to create a condition for any organization or entity other than the Trust, which intends to carry out any fund raising activities for and in the name of PIPA to seek prior approval in writing from the Trust and comply with any other conditions as prescribed.

Section 11 amends section 24 of the Principal Act by repealing the current text in subsection (2) and (3) and substituting with new texts. In effect, clearance conditions are created whereby annual budget intended for ‘primary activity’ relating to management of PIPA; and for ensuring that exploitation of the resources of PIPA remains limited, set out in section 6 (1) (b) and (c) must be cleared first by the PIPA Management Committee; and for annual budget intended for ‘secondary activity’ set out in section 7, must be cleared first by the Government, in its capacity as owner of PIPA in trust for and on behalf of the people of Kiribati. It also clarifies that ‘primary activity’ takes priority over ‘secondary activity’ in regards to the use of Trust’s funds; and

In subsection 4(d) inserts a sentence after the word inflation to include ‘financial commitments of contributing members’ among the factors which the Board must take into consideration as to whether or not the budget presented for the Board’s consideration is sustainable or otherwise;

Section 12 amends section 25 of the Principal Act by repealing and substituting with a new and more elaborative section 25(1), (2) and (3), to improve accountability in manner in which account and funds are managed.

Section 13 further amends section 25 by inserting a new section 25A (Statement of accounts and annual report) to improve transparency by creating a mandatory reporting requirement of PIPA Trust’s audited financial statement to Parliament.

Section 14 amends section 26(2) of the Principal Act by consolidating subsections (2) and (3) into one subsection as they both deal with the Conservation Contract referred to in section 6 (2) of the Principal Act.

Honourable Alexander Teabo
Minister of Environment, Lands and Agricultural Development
09 July 2019

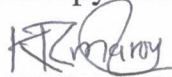
LEGAL REPORT

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

Tetiro Maate Semilota
Attorney General

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

This printed impression of the Phoenix Islands Protected Area Conservation Trust (Amendment) Act 2009 has been carefully examined by me with the Bill who passed the Maneaba ni Maungatabu on the 4th of November 2019 and is found by me to be a true and correctly printed copy of the said Bill.



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Kakiata Tikataake
OIC of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this day of
..... 2019.



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