

**IMMEDIATE  
ATTENTION**

SM/08/346

December 11, 2008

To: Members of Executive Board

From: The Secretary

Subject: **Palau—Publication of Detailed Assessment on Anti-Money Laundering and Combating the Financing of Terrorism**

Attached for the **information** of Executive Directors is the detailed assessment on Anti-Money Laundering and Combating the Financing of Terrorism for Palau. The assessment was prepared by the Fund staff using the methodology endorsed by the Financial Action Task Force on Money Laundering in February 2004 and by the Fund's Executive Board in March 2004.

The assessment was presented to the Asia Pacific Group, which adopted the assessment as a mutual evaluation report at its Plenary in Bali, Indonesia in July 2008.

The authorities of Palau have consented to the publication of the assessment. This assessment will be posted on the Fund's external website after December 18, 2008.

Questions may be referred to Mr. Lalonde (ext. 38691) and Ms. Cotter (ext. 35841) in LEG.

This document will shortly be posted on the extranet, a secure website for Executive Directors and member country authorities.

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PALAU

DETAILED ASSESSMENT  
REPORT ON ANTI-MONEY  
LAUNDERING AND  
COMBATING THE FINANCING  
OF TERRORISM

JULY 10, 2008

INTERNATIONAL MONETARY FUND  
LEGAL DEPARTMENT

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## ACRONYMS

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
AMLAT	Anti-Money Laundering Assistance Team
APG	Asia/Pacific Group on Money Laundering
ARS	Alternative Remittance Systems
BPS	Bureau of Public Safety
CCDA	Cash Courier Disclosure Act of 2007
CDD	Customer Due Diligence
CID	Division of Criminal Investigation & Drug Enforcement of the BPS
CSP	Company Service Provider
CTA	Counter-Terrorism Act of 2007
CTR	Cash Transaction Report
DNFBP	Designated Non-Financial Businesses and Professions
DRT	Division of Revenue and Taxation
FATF	Financial Action Task Force
FIA	Financial Institutions Act of 2001
FIB	Foreign Investment Board
FIC	Financial Institutions Commission
FIU	Financial Intelligence Unit
FT	Financing of terrorism
LEG	Legal Department of the IMF
MLPCA	Money Laundering and Proceeds of Crime Act of 2001
MOF	Ministry of Finance
MOJ	Ministry of Justice
ML	Money laundering
MLA	Mutual legal assistance
MLWG	Money Laundering Working Group
MOU	Memorandum of Understanding
MVTS	Money and Value Transfer Services
NPO	Non-profit organization
OAG	Office of the Attorney General
OEK	<i>Olbiil Era Kelulau</i> (Congress)
OTC	Over-the-Counter (Exchange Dealer)
PALP	Pacific Anti-Money Laundering Program
PEP	Politically-exposed person
PNC	Palau National Code
SR	Special Recommendation
SRO	Self-regulatory organization
STR	Suspicious Transaction Report
TSP	Trust Service Provider
UN	United Nations Organization
UNODC	United Nations Office on Drugs and Crime
UNSCR	United Nations Security Council Resolution



## **PREFACE**

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Republic of Palau is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology 2004, as updated in February 2008. The assessment team considered all the materials supplied by the authorities, the information obtained on site during their mission from March 3 to March 17, 2008, and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the detailed assessment report.

The assessment was conducted by a team of assessors composed of staff of the International Monetary Fund (IMF) and two experts and an observer from the Asia/Pacific Group on Money Laundering (APG) acting under the supervision of the IMF. The evaluation team consisted of: Ms. Maud Böklerink (LEG, team leader); Ms. Marlene Manuel (LEG); Ms. Gabriele Dunker and Mr. John McDowell (respectively, legal expert and financial expert under LEG supervision). Mr. Lindsay Chan, from the APG Secretariat, participated as an observer during the assessment visit by prior agreement with the authorities. The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering (ML) and the financing of terrorism (FT) through financial institutions and designated non-financial businesses and professions (DNFBP). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Palau at the time of the mission or shortly thereafter. It describes and analyzes those measures, sets out Palau's levels of compliance with the FATF 40+9 Recommendations (see Table 1) and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). The report was presented to the APG and endorsed by this organization in its plenary meeting in Bali, Indonesia of July 7-11, 2008.

The assessors would like to express their gratitude to the Palauan authorities for their excellent assistance, cooperation and hospitality throughout the assessment mission.

## **EXECUTIVE SUMMARY**

### **Key Findings**

1. Palau has recently strengthened its AML/CFT legislative framework that has been in place since 2001 with the amendments to the Money Laundering and Proceeds of Crime Act of 2001 (MLPCA) and the Financial Institutions Act of 2001 (FIA), and with the enactments of the Counter-Terrorism Act of 2007 (CTA) and the Cash Courier Disclosure Act of 2007 (CCDA). Even though legislation has been in place for several years, there has not been sufficient implementation. Now that Palau has adopted additional legislative measures to safeguard its financial sector from misuse for money laundering (ML) and financing of terrorism (FT), the authorities should now expeditedly devote the resources to implementing the legislation.
2. The offense of money laundering is criminalized in the MLPCA; however, only about half of the twenty FATF designated categories of predicate offenses are covered by the money laundering offense. The financing of terrorism has been criminalized in 2007, yet the freezing of terrorist assets under UN Security Council Resolutions (UNSCRs) 1267 and 1373 is not adequately addressed. Palauan law shows several deficiencies with respect to the provisional measures of seizing of evidence and property and the freezing of capital and financial transactions.
3. The amended MLPCA does not cover the preventive measures in a satisfactory manner. There remain significant deficiencies in the areas of customer due diligence, record keeping, monitoring of transactions and relationships, and supervisory and oversight systems. Under the MLPCA, the Financial Institutions Commission (FIC) is the AML/CFT supervisor for the banks, the finance companies, the credit unions, and the money and value transfer services (MVTs). The insurance agents are covered by the MLPCA, yet not for AML/CFT supervision. The FIC does not have the resources to ensure AML/CFT compliance nor to issue any regulations or guidelines. The only designated non-financial businesses and professions (DNFBPs) that operate in Palau are attorneys who also provide company formation services; they are not covered by the MLPCA.
4. The Financial Intelligence Unit (FIU) has very recently been moved from the Office of the Attorney General (OAG) to the FIC; however, the FIC has not been provided with additional human, technical or financial resources to adequately carry out this additional FIU task. Without Palau dedicating additional resources, the overall AML/CFT systems remain deficient in several areas.

### **Legal Systems and Related Institutional Measures**

5. Overall, the crime rate in Palau is relatively low. Prostitution and consumer marijuana sales are considered to be the ongoing major sources of criminal proceeds in Palau. Illegal fishing by unlicensed foreign vessels poses a further problem. There is no known organized crime in Palau, nor any known terrorist financing situation.
6. Money laundering is criminalized under Palauan law broadly in line with the international standard. Most technical aspects of the Vienna and Palermo Conventions are complied with and the sanctions applicable for the money laundering offense seem to be appropriate. A serious shortcoming of the offense, however, constitutes the fact that eight out of the twenty FATF designated categories of predicate offenses are not covered by the money laundering offense, some of which seem to be of

utmost importance given Palau's economic dependence on tourism, agriculture, and fishing as well as its geographic location. The OAG has prosecuted six cases of money laundering offenses.

7. The newly-enacted CTA criminalizes the financing of terrorism largely in line with the international standard. However, the CTA has only been enacted in April 2007 and at the time of the on-site mission, Palau had not conducted any investigations or prosecutions relating to terrorist financing. Accordingly, the terrorist financing offense has not yet been tested before the courts.

8. With regard to confiscation, Palauan law allows for the criminal confiscation of proceeds of the money laundering offense as well as civil forfeiture or criminal confiscation of any property related to terrorism financing. However, neither property relating to the predicate offenses, including the proceeds of, instrumentalities used or intended for use in the commission of the crime, nor property of corresponding value to property laundered, instrumentalities used in or intended for or use in the commission of any predicate offense can be confiscated.

9. Provisional measures available under the law include the seizing of evidence and property as well as the freezing of capital and financial transactions, whereby any of those measures are subject to approval by the Supreme Court. While seizing is available both with respect to the money laundering and the terrorism financing offense, freezing measures may only be applied with respect to capital or transactions suspected to involve money laundering but not terrorism financing. Equally, measures to identify and trace property are available with respect to the money laundering but not the terrorism financing offense.

10. The freezing of terrorist assets under UNSCRs 1267 and 1373 is not adequately addressed. Hardly any of the required procedural aspects to ensure effective compliance with the Resolutions are covered. It is unclear which authority is responsible for receiving, issuing and most importantly disseminating designations pursuant to the Resolutions and no procedures are in place to ensure that terrorist funds are frozen immediately and without undue delay.

11. The functions of the FIU are governed primarily by the MLPCA of 2001, as amended in December 2007. The FIU was established in 2001 in the OAG and provided with law enforcement powers. Since February 12, 2008, it has been relocated from the OAG to the FIC.

12. The FIU has been operating without dedicated full-time resources since its inception. However, the FIC has developed a draft new organizational structure and has proposed a supplemental budget for submission to the *Olbiil Era Kelulau* (OEK, Congress). Despite the resourcing issue, the FIU has been able to process, although without having a documented standard operating procedure, 71 suspicious transaction reports (STRs), including the dissemination to the Division of Criminal Investigation & Drug Enforcement (CID) for investigation.

13. The FIU's effectiveness would be enhanced if it had dedicated staffing resources and documented standard operating procedures on STR analysis and dissemination. Furthermore, it should be able to obtain additional information from reporting entities in response to STRs without the need for a court order. The FIU should also start providing STR forms, guidelines, and feedback on the STRs to the reporting entities.

14. The CID of the Bureau of Public Safety (BPS) has been tasked with investigating money laundering and terrorist financing cases. The CID follows up on the STRs disseminated by the FIU, but it never has initiated an investigation into money laundering or terrorist financing that was not related to an STR. Although the law has provided the CID with adequate special powers, the CID has not made use of any of these powers for its investigations.

15. The CCDA, which was enacted in 2007, gives ample powers to the Division of Customs to check for cross-border cash transportations. Even though the law is new, Customs has already been implementing the requirements of the law with good results.

### **Preventive Measures—Financial Institutions**

16. Palau's small financial sector focuses on providing basic financial services to the population. There are seven banks licensed by the FIC of which four are branches of foreign banks. The nonbank financial sector consists of insurance agents, finance companies, MVTs, and credit unions. All these financial institutions are covered by the MLPCA. The FIC has been designated as the AML/CFT supervisor for the entities, but for the insurance agents who are not licensed nor supervised.

17. As noted above, Palau has improved its AML/CFT framework with the amendments to the MLPCA and the FIA; however, there are still significant shortcomings to the legal framework, implementation deficiencies, and a regulatory body with inadequate resources. All these areas need to be strengthened before Palau can have an effective AML/CFT regime and one that meets international standards. Particular attention and strengthening is needed regarding deficiencies in the areas of supervisory and oversight systems, resources of authorities, customer due diligence (CDD), record keeping, and monitoring of transactions and relationships.

18. The supervisory and oversight systems have significant weaknesses. The FIC only consists of an Executive Commissioner, a bank examiner in training, and a support person, which is not adequate staffing to execute its tasks. The FIC has not yet supervised its financial institutions to ensure effective implementation of AML/CFT requirements. Further, Palau has not yet provided guidelines to its financial institutions to assist in implementing the AML/CFT requirements.

19. Omissions are significant in the area of CDD. Deficiencies include the need to address politically-exposed persons (PEPs) which are not included in the MLPCA. Other issues not appropriately addressed include cross-border correspondent banking relationships or payable-through accounts, high-risk categories of customers do not require enhanced due diligence, and a threshold gap exists in identifying occasional customers utilizing wire transfers.

20. Record-keeping deficiencies also are prominent in the MLPCA. Some of these omissions include no requirement for financial institutions to maintain all necessary records on transactions for at least five years, no requirement to maintain account files and business correspondence for at least five years, no wire transfer requirements for domestic institutions, a gap in coverage exists resulting in foreign wire transfers between \$1,000 and \$5,000 not being covered by wire transfer requirements, and no risk-based procedures for identifying and handling wire transfers without complete originator information.

21. The area of monitoring of transactions and relationships requires attention. The requirements in Section 11 of the MLPCA are new and have not been implemented, financial institutions have not been provided information regarding weaknesses in the AML/CFT systems in other countries, and there is no plan or procedure to apply counter-measures in the AML/CFT systems of other countries.

22. Financial institutions are required to report suspicions for money laundering to the FIU, yet over the past years, only two of the seven banks indeed have reported STRs. The reporting of suspicious transactions related to the financing of terrorism is not sufficiently covered in the MLPCA. Even though there has been an FIU in Palau since 2001, and the MLPCA provides for safeguards from liability for reporting in good faith, the U.S.-owned banks reported in the past to the U.S. authorities. These banks have indicated that with the amendments to the MLPCA and the FIA and the relocation of the FIU to the FIC, they will start reporting STRs to the Palau FIU.

23. While the amendments of the MLPCA and the FIA move Palau closer to legal compliance with international standards, further work is necessary to enhance these Acts to resolve noted deficiencies, gaps in the law, and inconsistencies in coverage of financial institutions. A high priority should be the proper staffing, funding, and training of individuals in the FIC to ensure the implementation of the AML/CFT regime and appropriate supervision of AML/CFT compliance in covered entities.

24. The MLPCA covers MVTS as financial institutions and as alternative remittance services (ARS), however, depending on the categorization different requirements apply. The FIC has indicated that it will classify MVTS as ARS and thus will license them. The FIC, however, has not yet identified all ARS providers nor has it issued any implementing regulations. As a consequence, ARS are unsupervised for AML/CFT compliance with the MLPCA.

#### **Preventive Measures—Designated Non-Financial Businesses and Professions**

25. The DNFBPs that operate in Palau comprise attorneys who also provide company formation services. They are not covered under the MLPCA, and in practice they also do not comply with the preventive measures of the MLPCA. The only DNFBPs that are covered under the MLPCA are casinos, but there are no licensed casinos in Palau. Other DNFBPs, such as notaries, auditors, real estate agents, and dealers in precious metals or precious stones are present in Palau but their activities fall outside the intended scope of the FATF Recommendations.

#### **Legal Persons and Arrangements & Non-Profit Organizations**

26. Corporations have to register with the Registrar of Corporations, and in case there is any foreign ownership or foreign investment in the corporation, they are also obliged to obtain pre-approval from the Foreign Investment Board (FIB). The FIB vets applications to some extent, but the Registrar of Corporations does not conduct any examinations to determine if the data provided by the corporations is accurate. As this can cause problems for FIU and law enforcement in analyzing STRs and investigating ML/FT cases, the authorities should implement measures to ensure that the information on corporations and their ownership and control structure is accurate and current.

27. Palau has a rudimentary oversight of its nonprofit organizations (NPO) sector. There is a basic registration requirement with the Registrar of Corporations and a requirement for annual

reports. However, the competent authority has neither undertaken a review of the NPO sector nor monitor NPO activities.

### **National and International Cooperation**

28. Palau has created a Money Laundering Working Group (MLWG) in 2003 to provide input to the President on AML/CFT policy issues; this MLWG has been meeting on a too irregular basis to have played a significant role in AML/CFT policy development. Although there are no specific legal mechanisms in place for operational cooperation, due to the fact that Palau is a small community, this sort of cooperation has been taking place on an ad hoc basis.

29. The legal framework for mutual legal assistance and extradition as contained in the Mutual Legal Assistance in Criminal Matters Act and the Extradition and Transfer Act is basically sound, and in a few cases Palau has cooperated with foreign authorities with respect to both mutual legal assistance and extradition. Subject to dual criminality, the Palauan authorities may take any measure on behalf of another country that could be taken with respect to a domestic case.

30. However, the application of the dual criminality requirement entails that all shortcomings of the money laundering offense may directly limit Palau's ability to provide mutual legal assistance for example in cases involving any predicate offense not covered by the MLPCA. Equally, the limitations on the availability of provisional measures, including seizing, freezing and tracing, and of confiscation measures also apply in cases where the authorities operate upon request of another country.

31. Palauan laws authorize both the FIC and the FIU to cooperate with their respective international counterparts, yet both agencies have had limited experience with the exchange of information.

### **Other Issues**

32. Palau has significant problems with respect to adequate financial and human resources for the FIU and FIC, and without dedicating additional resources to address the AML/CFT legislation, the overall AML/CFT system will remain deficient.

33. The revisions to the MLPCA have resulted in a statute with several inconsistencies and duplications. In order to provide for a common set of requirements applicable to the financial and nonfinancial sectors and to ensure a clearer legal environment, it is strongly suggested to draft a new law on AML/CFT taking into account the recommendations provided in this report. This would also permit further compliance with the FATF 40+9 Recommendations.

## **1. GENERAL**

### **1.1. General Information on the Republic of Palau**

34. The Republic of Palau is an archipelago of more than 300 islands in the Western Pacific. Palau has a land area of 458 square kilometers and is politically divided into 16 states, with more than two-thirds of its approximately 20,900 population residing in or near the state of Koror. The seat of government was moved from Koror to Melekeok where a new governmental capitol complex was opened in October 2006.

35. The Republic of Palau became an independent nation in free association with the United States of America on October 1, 1994. Prior to that time, Palau had been a United Nations Trusteeship administered by the United States since 1947 pursuant to an agreement with the United Nations.

36. The Compact of Free Association between Palau and the United States broadly defines the nature of the political, economic, and military relationships between Palau and the United States. Under the Compact, Palau is empowered to operate under its own Constitution and conduct its own domestic and foreign affairs. The Compact has specific defense and security provisions that last for 50 years. The Compact has financial aid provisions that last for 15 years, those provisions are set for renegotiation during 2008 as they expire in 2009.

37. The democratically elected National Government of the Republic of Palau is modeled upon that of the United States. The Constitution which took effect on January 1, 1981 provides for free and fair elections for the executive and legislative branches and an independent judiciary. The executive branch is headed by a President, who is elected for not more than two consecutive four-year terms and who is assisted by a Vice President and a Cabinet of eight ministers.

38. The legislative branch is known as the *Olbiil Era Kelulau* or OEK, a traditional Palauan term roughly translated as the House of Whispers. The OEK is a bicameral legislature comprised of nine Senators and 16 Delegates. Congressmen are elected for four year terms during the same election as that for the President and Vice President, the next election is scheduled for November 2008. In 2004, a Constitutional Amendment was passed that limits individual Congressmen to no more than 3 terms in the Congress (either house). Senators are elected on a nation-wide platform based on the vote of the national population. Delegates are elected on a state-wide platform, one from each state, based on the vote of each of the individual 16 states' population.

39. Elected officials are subject to public accountability through elections every four years. There is also a parallel accountability process through the Council of Chiefs, which comprises the highest traditional chiefs from each of the 16 states, and is an advisory body to the president. The Council is consulted on matters concerning traditional laws and customs, and is another platform for public expression.

40. The judicial branch is comprised of a unified judiciary consisting of the Supreme Court (an appellate and trial division) and the lower Court of Common Pleas. All judges hold office for life, upon the condition of good conduct. In light of the historic relationship between the Republic of Palau and the United States, Palau's laws are patterned after those in the United States and Palau's legal

system closely resembles that of the American model. Similarly to the U.S., all Acts in Palau constitute the Palau National Code (PNC). Furthermore, the rules of the common law as generally understood and applied in the U.S. are also the rules of decision for the Palauan courts in those cases where Palauan written or customary laws are absent.

41. The judiciary is held in high regard by all sectors of Palauan society, including by politicians and government officials. The Courts have deliberated on numerous suits and counter suits, both against and for politicians and government officials. By all independent accounts, the judiciary is an institution with a high level of integrity.

42. Palau is a medium-income country with a small market-based economy largely sustained by transfer payments from the United States. Nearly half the work force is employed by National and State governmental entities. Tourism and other service sectors account for most other paid employment. Tuna, harvested by foreign-owned and foreign-crewed fishing fleets, is the dominant export. Much of the population still works in traditional subsistence agriculture and fishing. More than 5,000 persons of the population are migrants, mainly from the Philippines. A Free Trade Zone Act was adopted in 2003, but no free trade zone has yet been established in Palau.

## **1.2. General Situation of Money Laundering and Financing of Terrorism**

43. Prostitution and consumer marijuana sales are considered to be the ongoing major sources of criminal proceeds in Palau. Individual karaoke bars or massage parlors engage in prostitution, and marijuana farmers export their crops to Guam and the Federated States of Micronesia and also sell the marijuana to (local) individual consumers. There have been a few cases of drugs trafficking from the Philippines and two human trafficking cases. There is illegal fishing by unlicensed foreign vessels, but since the vessels avoid entering the seaport of Palau, there are no proceeds laundered in Palau. There is no known organized crime in Palau, nor any known terrorist financing situation.

44. In November 2006, the Financial Institutions Commission (FIC) closed and placed into receivership the Pacific Savings Bank, a locally-chartered bank that had approximately 7,500 customers and \$23 million in deposits. The bank was closed for insolvency and illiquidity after members of the board of directors took out large unsecured personal loans resulting in a capital deficiency of about \$12 million. This case resulted in two money laundering prosecutions (pending trial) by the Office of the Attorney General (OAG) of persons that were connected to the bank. In addition, the Office of the Independent Prosecutor, which was especially installed for the investigation into the failed bank, is also pursuing further money laundering investigations against the directors of this bank.

45. There are some corruption practices in Palau, especially within some governmental sectors from local to national levels. Cases consist mainly of misuse of government funds, favoritism and cronyism, the latter two being due to the fact that Palau is a small country with many family or clan relations. A Special Prosecutor and a Public Auditor are part of the mechanisms in place to increase government accountability. The Office of the Special Prosecutor has filed numerous charges over the past years against elected OEK members and state officials for misuse of public funds. The Public Auditor is subject to a peer review process every three years in accordance with U.S. accounting practices. Palau's anti-corruption measures also include the Code of Ethic Act of 1999 and the Public Service Rules and Regulations of 1996.



### 1.3. Overview of the Financial Sector

46. The Palau banking industry consists of seven banks that are licensed by the FIC to operate as banks as defined under the Financial Institutions Act of 2001 (FIA). There are four branches of foreign banks, of which three are chartered in the U.S. and one in Taiwan. These four foreign-owned banks are, besides being supervised by the FIC, also regulated by their domestic regulators: the FDIC and other competent U.S. authorities for the U.S. banks and the Taiwanese supervisor for the Taiwanese bank. These four banks make up 80 percent of the market in Palau; the remainder is split amongst the three locally-chartered banks. These three local banks are chartered in Palau and are licensed and subject to regulation and supervision by the FIC.

47. Palau law does not allow for the establishment of offshore banks and the FIC is the primary licensing authority for institutions that engage in banking activities in the country. Currently, local banks are unable to establish branches outside Palau. Banks licensed in Palau are required to incorporate and the FIC has exclusive authority for the licensing of these institutions. The banking sector also includes the National Development Bank of Palau which is solely engaged in business financing and mortgage lending and is not allowed to take deposits as per its enabling statute that created this institution. This bank is not licensed or regulated by the FIC, as it is exempted under the FIA.

48. The Palau nonbank financial sector consists of 12 insurance intermediaries (known as “insurance agents” in Palau), 12 finance companies, 14 money and value transfer services (MVTs) and approximately 3 credit unions. All locally-owned businesses in Palau are required to obtain a business license from the Division of Revenue and Taxation (DRT) and a business license from each state that they operate in. Partly or wholly, foreign-owned businesses are required to obtain a license from the Foreign Investment Board (FIB), in addition to the DRT and state licenses.

49. Insurers and insurance intermediaries are defined as “cash dealers” or “over-the-counter (OTC) exchange dealers” under Section 4(e)(1) of the MLPCA. If they are categorized as “OTC exchange dealers,” they are required to be licensed by the Minister of Justice (MOJ) under Section 15 of the MLPCA. If they are categorized as “cash dealers,” there are no licensing or supervisory requirements under the MLPCA. There is no insurance legislation for prudential supervision of insurers and insurance intermediaries. Insurance agents provide life (group and individual), property and casualty, group health, and automobile insurance products.

50. The MVTs have recently been brought under the purview of the FIC as per the recent amendments to the MLPCA. The activity of “money transmission services” is covered under the definition of “financial institutions” or “credit institutions” in Section 4(k)(4) MLPCA or as “Alternative Remittance Systems (ARS)” under Section 8 of the Act. If MVTs are categorized as “ARS,” they are required to be licensed by the FIC. If they are categorized as “financial institutions” or “credit institutions,” there is no licensing requirement under the MLPCA, but the FIC may conduct compliance audits under Section 14(b). The FIC has indicated that it will categorize them as ARS but it has not yet identified all MVTs operating in Palau, with the exception of the three largest operators (including Western Union and Pinoy Express). The three known MVTs provide international money transfer services for the foreign worker population and are utilized by the Palauan population for receipt of funds from relatives abroad or for remitting funds to dependents in schools abroad or receiving medical care in the Philippines or other countries. Money transfer businesses are also

increasingly being utilized for payments for the purchase of goods, such as, lumber and construction materials.

51. Credit unions are covered under Section 4(k)(1) of the MLPCA as “financial institution” or “credit institution.” The FIA (Section 3(f)) requires the licensing of credit unions as financial institutions where the total assets are over \$500,000. The FIC has not licensed any credit unions as financial institutions under the FIA, since their total assets are below \$500,000. Most credit unions have been incorporated as nonprofit corporations so they are tax-exempt (except for employee earnings) and do not require business licenses from the DRT (unless they would also engage in business activities).

52. Finance companies are covered under Section 4(k)(2) of the MLPCA as “financial institutions” or “credit institutions” whose primary business activity includes “lending, including consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions. The FIC may conduct compliance audits under Section 14(b) of the Act.

53. There are no securities dealers in Palau although such activity is covered under the FIA and under the MLPCA as “cash dealers” or “OTC exchange dealers” and as “financial institutions.”

Statistical Table 1. Structure of the Financial Sector, 2008

	Number of Institutions	Authorized/ Registered and/or Supervised by:
Commercial banks	7	FIC
Mortgage banks	1	-
Securities dealers	0	FIC
Insurance brokers	12	(MOJ)
Finance companies	12	-
Money transmitters	14	FIC
Credit Unions	3	None (if assets under \$500,000)
	0	FIC (if assets over \$500,000)

54. The following table sets out the types of financial institutions that can engage in the financial activities that are within the definition of “financial institutions” in the FATF 40+9.

Statistical Table 2. Financial Activity by Type of Financial Institution

Type of financial activity (See glossary of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator & supervisor
1. Acceptance of deposits and other repayable funds from the public (including private banking)	1. Banks	1. FIC
2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	1. Banks 2. Finance companies	1. FIC 2. FIC
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	1. Banks	1. FIC
4. The transfer of money or value (including financial	1. Banks 2. Money remitters	1. FIC 2. FIC

activity in both the formal or informal sector (e.g., alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)		
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	1. Banks	1. FIC
6. Financial guarantees and commitments	1. Banks	1. FIC
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	1. Banks	1. FIC
8. Participation in securities issues and the provision of financial services related to such issues	1. Banks	1. FIC
9. Individual and collective portfolio management	1. Banks	1. FIC
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	1. Banks	1. FIC
11. Otherwise investing, administering or managing funds or money on behalf of other persons	1. Banks	1. FIC
12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	1. Life insurance agents	1. none
13. Money and currency changing	1. Banks	1. FIC

55. The foreign banks in Palau are accustomed to meeting the AML/CFT compliance requirements of their home jurisdictions. The compliance culture is already embedded and training is provided in the Palau branches to employees. The smaller locally-chartered banks have a limited understanding of AML/CFT requirements, but nevertheless try to comply with the law. Fortunately, locally-chartered banks have employed some foreigners experienced in complying with AML/CFT requirements in their home countries, thus allowing a transfer of knowledge. There is very limited understanding of AML/CFT requirements in nonbank financial institutions, except for one or two international money remitters operating in Palau.

#### 1.4. Overview of the DNFBP Sector

56. The designated non-financial businesses and professions (DNFBPs) in Palau comprise company service providers (CSPs) and lawyers.

57. The only legal service providers in Palau are Palau Bar Association attorneys. There are approximately 60 Palau Bar members, of which approximately half are a National or State Government attorneys. Admission to the Palau Bar requires passing the U.S. Oregon Bar

Examination, the U.S. Multi State Examination and a Palau specific examination. There are approximately 10 off-island attorneys who are Palau Bar members, these attorneys only appear occasionally (generally once or twice per year, or less) in Palau, usually on behalf of a long-established corporate client. The approximately 20 local Bar members engaged in private practice provide general legal services, including criminal defense, civil litigation, estate planning, and company formation. Attorneys have ethical rules which forbid active participation in any criminal activity, and anyone with a felony conviction cannot be a member.

58. Although there is no separate license requirement for the provision of company service provider (CSP) services in Palau, there are about 13 lawyers who provide company formation services of domestic legal persons. They would be categorized as CSPs under the FATF Recommendations since company formation services is one of the defining activities of CSP business under the Recommendations. CSPs in Palau do not provide any of the other services under the definition of CSPs in the FATF Recommendations.

59. There are 124 licensed notaries under Title 11 PNC Section 702 in Palau, but they fall outside the intended scope of the FATF standard since they provide only the basic service of witnessing signatures and certification of photocopies of documents as true copies of the originals and do not prepare for or engage in any financial transactions for clients. There are no trust service providers (TSPs) in Palau and there is no specific trust law that would allow for the establishment of domestic trusts, although trusts are recognized as a type of corporation. The Corporation Regulations Section 2.10 allow for nonprofit corporations that are trusts, and under the FIA Section 51a(15) banks can provide trust services. No trusts have been incorporated as nonprofit corporations and no banks provide trust services. There are a few family trusts that hold the titles to land in Palau. There are about three auditors who also provide accounting services in Palau, but they also fall outside the intended scope of the FATF standard since they do not engage in the activities defined as those of DNFBPs under the FATF standard. These auditors are all qualified with the U.S. Society of Certified Practicing Accountants; they generally have their head offices in Guam or the Philippines. There are no practicing accountants, other than the auditors who also provide accounting services, since the market for accounting services is miniscule.

60. There are no licensed casinos in Palau. There is a law that would allow for the licensing of internet casinos, but although two internet casino licenses were granted under this law, they expired without the licensees commencing operations. There is no law that would allow for the licensing of land-based casinos.

61. The real estate business in Palau would not fall under the category of real estate agents in definition of DNFBPs in the FATF Recommendations. All real estate property in Palau is owned by Palauan nationals, including tribal clans. It is unconstitutional for non-Palauans to own land. The typical buying and selling of real estate among Palauans is conducted through private negotiations between the buyer and seller and does not involve real estate agents. In real estate cases where agents are involved, this would be for the leasing of property to non-Palauans and rentals. The only Supreme Court decision on real estate found that a 99 year lease, which in effect alienated the land for five generations was tantamount to land ownership by non-Palauans and thus found that such a lease would be illegal and void. A Constitutional amendment to clarify or legalize 99 year leases is scheduled for a determination in a general election in November 2008.

62. There are no dealers in precious metals or dealers in precious stones in Palau that would be categorized as such under the FATF Recommendations. The few jewelry stores carry a limited and low cost selection of basic gold rings and necklaces and all transactions would fall under the threshold for coverage under the FATF Recommendations. There is a limited trade, within traditional Palauan Clans and Family Groups of “Palauan Money,” typically either beads with historical value, or turtle shell plates, but these forms of money are not publicly sold or traded, and are not available to foreigners. They do not easily lend themselves to money laundering as they have no corresponding publicly accepted monetary value.

63. The DNFBP sector has low ML and FT vulnerabilities due to the limited scope of business activities and the small size of the sector. The assessors have not identified any other DNFBPs which would be vulnerable to ML and FT. Lawyers and auditors understand the general compliance issues, the other DNFBP-sectors have very limited understanding of AML/CFT issues.

### **1.5. Overview of commercial laws and mechanisms governing legal persons and arrangements**

64. The only type of legal persons that can be formed in Palau are corporations. Corporations are incorporated by not less than three private persons and are authorized to issue stock. In addition, there are sole proprietorships and partnerships. A sole proprietorship is an unincorporated business that is owned by one individual and has no legal existence apart from the owner. A partnership is the relationship existing between two or more persons who join to carry on a trade or business.

65. Corporations are formed under the Corporations Act (Title 12 PNC). Under Section 103 of the Corporations Act, a corporation seeking a charter as a corporation is required to submit for approval of the President the articles of incorporation and the bylaws governing the operations of the corporation. The name of the corporation has to include as the last word “Limited,” Incorporated,” or “Corporation” or the abbreviation “Ltd.,” “Inc.,” or “Corp.” Corporations can be formed for-profit and not-for-profit. A nonprofit corporation can be a corporation, association, club, society, trust, league, or any other organization not organized for profit.

66. The articles of association and the charter, as well as any subsequent amendments, have to be filed with the Registrar of Corporations which is established in the OAG under the authority of the Corporations Act. The Registrar records, among other, the names, citizenship and (mailing) address of the incorporators, directors (both of which there have to be at least three) and the initial officers, if there are any non-Palauan owners, and the number of shares of each class of stock. Corporations have to file an annual report, which should include any changes in offices.

67. The FIB is in charge of the issuance of approval for all businesses with any foreign ownership or foreign investment, and upon approval issues Foreign Investment Approval Certificates. In addition, any person engaging in business in Palau has to obtain from the DRT a license to engage in business and pay an annual fee. There are approximately 1,700 business licenses issued by the DRT. These include licenses issued to sole proprietorships, partnerships, corporations, and (foreign) limited liability companies. Companies that operate multiple businesses, or that have businesses in different locations, must have a license for each location and/or for each business activity. It is estimated by the DRT that there are about 700 to 800 legal entities that control the 1,700 licenses.

## **1.6. Overview of strategy to prevent money laundering and terrorist financing**

### **AML/CFT Strategies and Priorities**

68. Palau has been a member of the APG since 2001. The MLPCA was signed into law by the President on June 19, 2001. Amendments to the MLPCA were passed into law on December 19, 2007, and amendments to the FIA, of which a few pertain to the AML duties and responsibilities of the FIC (in particular Section 49), were signed into law on February 13, 2008. The main priority of the authorities is to implement the amendments to these laws as soon as possible.

69. The 2001 MLPCA placed the Financial Intelligence Unit (FIU) in the OAG. The FIU did not have a separate budget and therefore utilized the limited resources of the OAG. A review of the FIU was conducted by a consultant obtained by the Pacific Anti-Money Laundering Program (PALP), whose expert recommended that the FIU not be housed in or staffed by the OAG, whose job it is to prosecute crimes. As a result, the 2007 amendments to the MLPCA allowed for the President to decide whether the FIU be in the OAG or in the FIC. Consequently, by Executive Order No. 246 of February 12, 2008 the President ordered the transfer of the FIU from the OAG to the FIC, but no additional budget or resources have been allocated. The FIC is currently looking into ways to set up and resource the FIU.

70. The MLPCA amendments also brought the MVTS under the purview of the FIC. The FIC is currently exploring which issues should be addressed in the implementing regulations and how many MVTS operate in Palau. The Ministry of Finance (MOF) is in the process of drafting regulations for the Cash Courier Disclosure Act of 2007 (CCDA), as well as providing training to the officers of the Division of Customs regarding the requirements of this law.

71. Recently, a law enforcement mentor, jointly funded by the United Nations Office on Drugs and Crime (UNODC) and the PALP of the Pacific Islands Forum, was stationed in Palau. Although the mentor will assist multiple pacific island nations, he is resident in Palau and it is expected that a majority of his time would initially be spent in assisting the Palau FIU and Customs and the Division of Criminal Investigation & Drug Enforcement (CID) of the Bureau of Public Safety (BPS).

### **The Institutional Framework for Combating Money Laundering and Terrorist Financing**

72. By Executive Order No. 218 of November 10, 2003, the President established a Money Laundering Working Group (MLWG) in Palau. This Working Group is the coordinating group for Palau's AML/CFT efforts and provides input on AML/CFT policies to the President. The membership of the MLWG consists of the Chairman of the FIC Board, the Attorney General, the Executive Director of the FIC, the Chief of the Bureau of Revenue, Customs & Tax - Customs Division, the Director of the Bureau of Immigration, the Director of the Bureau of Public Safety, and a representative from the Office of the President. The MLWG has not developed an overall AML/CFT strategy for Palau. The Working Group meets irregularly, its agenda being led by issues at hand.

73. The FIC was established in 2001 and is in charge of licensing, supervising, and regulating Palau's financial institutions under the FIA. Under the MLPCA, the FIC is in charge of AML/CFT compliance of financial institutions and the licensing of money transmission providers. Since

February 2008, the FIC is also in charge of the FIU. There are no other (financial) supervisors in Palau.

74. The FIU was originally established within the OAG in 2001, but was transferred to the FIC in February 2008. The FIU is responsible for receiving, analyzing, and processing suspicious transaction reports (STRs), cash transaction reports (CTRs), and cross-border cash declarations. Upon a suspicion of money laundering, terrorist financing or a predicate offense, the FIU may disseminate these reports to other domestic authorities.

75. The MOF is, inter alia, responsible for the Bureau of Revenue, Customs & Tax, which in turn consists of the DRT and the Division of Customs.

76. The DRT issues business licenses and collects taxes. The Division of Customs has a Revenue Collection and Law Enforcement Operation Unit. The latter unit is responsible for border entry and checks persons at points of entry into Palau among others for cross-border cash transportations.

77. The MOJ is responsible for the OAG, the BPS, and the Bureau of Immigration. The MOJ delegates all tasks related to AML/CFT to these agencies.

78. The OAG is responsible for the prosecution of money laundering cases, execution of mutual legal assistance and extradition requests. In addition, the Attorney General is also the Registrar of Corporations and maintains registers of all corporations, including nonprofit organizations (NPOs).

79. The BPS has six divisions: Patrol, Criminal Investigation & Drug Enforcement, Fish and Wildlife, Fire and Rescue, Correction, and Marine Law Enforcement. The CID is the division in charge of investigations into ML and FT. The Division of Marine Law Enforcement's main task is to look out for and investigate unauthorized fishing, but will also check for drugs, cigarettes or human smuggling.

### **Approach Concerning Risk**

80. Palau has not undertaken a risks assessment nor do the authorities have an approach toward ML/FT risk.

### **Progress since the Last APG Mutual Evaluation**

81. Palau was last assessed by the APG in March 2003 for its compliance with the FATF 40 Recommendations. The APG mission reviewed the relevant AML laws and regulations and addressed the legislative and regulatory response to the risk of money laundering and the effectiveness of implementation and enforcement of this response. In order to address the issues identified, the APG made several recommendations with respect to the domestic coordination and overall resources, the legal framework, the financial supervisor, the FIU, and law enforcement.

82. To give effect to the recommendations, the authorities established the MLWG to coordinate Palau's efforts on AML/CFT. The MLPCA was amended in December 2007 and the CCDA and the Counter-Terrorism Act of 2007 (CTA) were enacted. Money transfer operators were included within the MLPCA with the 2007 amendments.

83. Although there has been progress in the area of legislation, implementation is lacking. The FIU has yet to become fully operational. No implementing regulations with respect to the MLPCA have been issued, nor have any AML/CFT examinations taken place. Above all, there remains a problem with dedicating sufficient resources to the OAG, the FIC, and the FIU to perform their AML/CFT tasks.



## **2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES**

### **2.1. Criminalization of Money Laundering (R.1 & 2)**

#### **2.1.1. Description and Analysis**

Legal Framework:

84. Money laundering is criminalized in Section 3 of the MLPCA.

Criminalization of Money Laundering (c. 1.1—Physical and Material Elements of the Offense):

85. Neither the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) nor the United Nations Convention Against Transnational Organized Crime (the Palermo Convention) have been signed or ratified by Palau, whereby the authorities stated that the ratification process of the Palermo Convention was pending at the OEK at the time of the assessment.

86. Chapter 36 of Title 17 Palau National Code (PNC), also referred to as the Money Laundering and Proceeds of Crime Act of 2001 (MLPCA), was enacted on June 19, 2001. Amendments to the MLPCA took place in December 2007 and were aimed at bringing the money laundering criminalization more in line with the international standard. Through the amendment, the predicate offenses for money laundering were limited from “all crimes” to “all felonies.”

87. Section 3 of MLPCA defines money laundering as

“(1) the conversion or transfer of property for the purpose of concealing or disguising the illegal origin of such property or assisting any person who is involved in the commission of a predicate offense to evade the legal consequences of his or her actions; or

(2) the concealment or disguise of the illegal nature, source, location, disposition, movement, or ownership of property by any person who knows that the property constitutes the proceeds of crime as defined herein; or

(3) the acquisition, possession, or control of property by any person who knows that the property constitutes the proceeds of crime as defined herein.”

88. The first part of Palau’s money laundering offense covers the conversion or transfer of proceeds of crime, and the second part criminalizes the concealment or disguise of such property. The third part criminalizes the acquisition, possession, or control of criminal proceeds if the person knew at the time of receipt or any time thereafter that property stems from the commission of a crime. It would seem, based on the language of the provision, that anybody using property would necessarily have to be in control thereof and that therefore Palau’s money laundering offense would also cover “knowingly using” criminal proceeds. However, in discussions with the authorities, it could not be established whether the term “control of proceeds” would in fact include the “use of” criminal proceeds and no case law was available to clarify the meaning of the term.

89. Palau’s money laundering offense, therefore, largely covers the material elements of the money laundering offenses as defined in the Palermo and Vienna Conventions.

### The Laundered Property (c. 1.2):

90. Pursuant to Section 4 (t) and (u) of the MLPCA, “proceeds of crime” includes any property or economic advantage derived from a crime, whereby “property” is defined as “assets, real property, or personal property of every kind whether moveable or immovable, tangible or intangible, and legal documents or instruments evidencing an interest in such assets.” While the provision does not specifically refer to “corporeal as well as incorporeal property,” both categories are covered as “property” extends to assets and intangible property of every kind, including legal documents and instruments evidencing and interest in such assets. The authorities stated that the definition would cover direct as well as converted proceeds but no case law could be provided to support that view. While the term “any economic advantage derived from a crime” seems to be rather broad, the assessors could not establish with certainty whether the offense of money laundering as defined in Section 3 extends to any type of property that directly or indirectly represents the proceeds of crime.

### Proving Property is the Proceeds of Crime (c. 1.2.1):

91. Section 3 (c) of the MLPCA provides that a person need not be convicted of a predicate offense to prove the illicit origin of proceeds. As a general principle of common-law criminal law, the level of proof applicable to determine the illicit origin of proceeds is beyond reasonable doubt.

### The Scope of the Predicate Offenses (c. 1.3):

92. Section 3 of the MLPCA provides that the defined *actus rei* relate to illegal property or proceeds of crime and does not limit the number of predicate offenses for money laundering. Section 4 of the MLPCA, however, expressly stipulates that “crime” or “predicate offense” includes “any act committed in the Republic of Palau that is a felony, or any act committed abroad, which constitutes an offense in that country and that would have constituted a felony had it occurred in the Republic of Palau.” Pursuant to Section 101 of Palau’s Criminal Code, a felony is a crime that is punishable with imprisonment of more than one year. Every other crime is a misdemeanor. The following FATF designated predicate offenses are felonies and therefore covered by Palau’s money laundering offense.

<b>Predicate offense</b>	<b>Law</b>
Terrorism, including terrorist financing	Section 5 Counter-Terrorism Act of 2007
Trafficking in human beings and migrant smuggling	Sections 3–8 of Anti-People Smuggling and Trafficking Act
Sexual exploitation, including sexual exploitation of children	Section 3603 (b) Criminal Code, Section 606 Child Abuse Act
Illicit trafficking in narcotic drugs and psychotropic substances	Section 3301 Controlled Substances Act
Corruption and bribery	Section 701 Criminal Code
Fraud	Sections 1903, 1904, 1906, 3707 Criminal Code
Counterfeiting currency	Section 1101 Criminal Code
Murder, grievous bodily injury	Sections 1701–1704 Criminal Code
Kidnapping, illegal restraint and hostage-taking	Sections 1401, 1801 Criminal Code
Robbery or theft	Sections 1902, 1907, 2701, 3007 Criminal Code

Smuggling	Sections 3704, 3705 Criminal Code
Forgery	Section 1501 Criminal Code

93. However, Palau law does not provide for predicate offenses in the categories of participation in an organized criminal group and racketeering, illicit arms trafficking, illicit trafficking in stolen and other goods, counterfeiting and piracy of products, environmental crimes, extortion, piracy and insider trading and market manipulation. Given Palau's economical dependence on tourism, agriculture and fishing as well as its geographic location, the listed categories seem to be of great relevance and should in any case be covered as predicate offenses for money laundering.

#### Threshold Approach for Predicate Offenses (c. 1.4):

94. Palau has adopted a threshold approach, listing all felonies as predicate offenses for money laundering. Pursuant to Section 101 of Palau's Criminal Code, a felony is a crime that is punishable by imprisonment for a period of more than one year. Every other crime is a misdemeanor.

#### Extraterritorially Committed Predicate Offenses (c. 1.5):

95. Pursuant to Section 4 of MLPCA, the money laundering offense is applicable to all felonies committed in the Republic of Palau or any act committed abroad, which constitutes an offense in that country and that would have constituted a felony had it occurred in the Republic of Palau. Therefore, all predicate offenses for money laundering under Palau's law extend to conduct that occurred in another country where the conduct constitutes an offense in that country.

#### Laundering One's Own Illicit Funds (c. 1.6):

96. Section 3 (a) MLPCA criminalizes the conversion, transfer, concealment, disguise, acquisition, possession, or use of criminal proceeds, regardless of whether the predicate offense has been committed by the offender or a third party. Self-laundering is, therefore, criminalized for all *actus rei* and, as discussed below, has been actively prosecuted in a number of cases.

#### Ancillary Offenses (c. 1.7):

97. Aiding and abetting, facilitating as well as counseling the commission of an offense is criminalized under the general provisions of the Criminal Code.

98. Section 102 provides that not only the immediate offender is punishable as a principal for committing the offense but every person who "aids, abets, counsels, commands, induces, or procures [...] or who causes" the commission of an offense. Section 103 further stipulates that anybody who "receives, relieves, comforts or assists the offender in order to prevent his apprehension, trial or punishment" shall be punished with imprisonment of not more than one-half of the maximum term of imprisonment or fined not more than one-half the maximum fine prescribed for punishment of the principal, or both.

99. Section 104 provides that sanctions for an offense are not only being applied to completed crimes but also to attempted crimes. Attempts are punished with imprisonment for a term not

exceeding one half of the maximum term of imprisonment or fine or both which may be imposed upon conviction for the commission of the offense attempted.

100. Pursuant to Section 901, if two or more persons conspire to commit a crime and one or more of such parties carry out an act toward the commission of the crime, each party shall be guilty of conspiracy. Conspiracy may be punished with imprisonment of not more than five years if the conspiracy was with regard to the commission of a felony.

101. Therefore, pursuant to Sections 102, 103, 104 and 901 of the Criminal Code, all parties involved in money laundering may be prosecuted under Palau law.

Additional Element—If an act overseas which does not constitute an offense overseas, but would be a predicate offense if occurred domestically, lead to an offense of ML (c. 1.8):

102. Pursuant to Section 4 MLPCA, the Palauan money laundering offense only applies to conduct in a foreign country if the conduct is criminalized in the country where it occurred. Therefore, absent dual criminality, the Palauan money laundering offense may not be applied to acts committed abroad.

Liability of Natural Persons (c. 2.1):

103. Section 3 (b) of the MLPCA provides that the intent required for the money laundering offense is “knowledge, intent, or purpose.” The authorities confirmed that for the money laundering offense to apply, a perpetrator has to act in the knowledge that the laundered proceeds are illicit. Palau’s law therefore meets the minimum international standard with respect to this criterion.

The Mental Element of the ML Offense (c. 2.2):

104. Section 3 (b) of the MLPCA expressly stipulates that the intent required for the money laundering offense may be inferred from objective factual circumstances.

Liability of Legal Persons (c. 2.3) and Liability of Legal Persons should not preclude possible parallel criminal, civil or administrative proceedings (c. 2.4):

105. The MLPCA defines “person” as any natural or legal person, whereby legal persons may be criminally sanctioned for money laundering pursuant to Section 30 MLPCA. Under some circumstance, a legal entity may be permanently or, for a minimum of 5 years, banned from carrying out any business activities in Palau, ordered to close permanently or for a minimum of 5 years their business premises which were used for the commission of the offense or may be required to publicize the judgment in the press or radio or television. Pursuant to Section 31 MLPCA legal persons upon conviction may be subject to additional civil penalties if the act involved a violation of legal persons reporting or customer identification or verification obligations under the MLPCA.

Sanctions for ML (c. 2.5):

106. Pursuant to Section 29 of the MLPCA, natural persons convicted of money laundering may be fined with not more than double the amount laundered or imprisonment for not more than one year and one day, or both if the total value of the proceeds of crime has a total value of less than \$2,500. If the total value of the proceeds laundered exceeds \$2,500, the fine shall be not less than \$5,000 or

double the amount laundered, whichever is greater, or imprisonment for not more than 10 years, or both.

107. Legal persons on whose behalf or for whose benefit a money laundering offense has been committed by one of their agents or representatives may be fined in an amount equal to two times the fines specified for natural persons and without prejudice to the conviction of the natural person perpetrator. Additional sanctions are available if the entity's agent or representative, on the entity's behalf or benefit, is convicted of three or more money laundering offenses within a five-year period. Specifically, Section 30 MLPCA provides that legal persons may be banned for a minimum of five years from conducting business within Palau, be ordered to close their premises permanently, to be dissolved, or be required to publish the judgment against it in the media.

108. As discussed under criterion 1.7, criminal sanctions are also applicable to persons attempting, aiding and abetting, facilitating and counseling the commission of or conspiring to commit the money laundering offense.

109. The sanctions available for money laundering seem to be in line with the level of penalties applicable to other felonies under Palauan law. In comparison, bribery is sanctioned with imprisonment of 5 years, counterfeiting of currency with 15 years, forgery with 10 years, embezzlement with 5 years, and fraud with 5 years, and the United States sanctions money laundering with a fine of not more than \$500,000 or twice the value of the property involved, or imprisonment for not more than 20 years.

110. The sanction actually imposed by the Palauan court in the one money laundering conviction cited below was imprisonment for 10 years. However, based on a habeus corpus writ, the convict got released and the case is currently on appeal.

111. Overall, the sanctions for money laundering available for both natural and legal persons seem to be effective, proportionate, and dissuasive.

Effectiveness:

112. Statistics kept at the OAG indicate that six cases of money laundering offenses were prosecuted, whereby one of those prosecutions was triggered by an STR. Two of the cases involved prostitution, two related to embezzlement, one related to bribery and one involved a crime as defined in the Foreign Investment Act. In all cases, the offenders were prosecuted for self-laundering.

113. All six cases were brought before the courts, whereby one case was dismissed as part of a plea bargain in 2006, one led to an acquittal, three cases are still pending, and one led to a conviction for money laundering in 2007, whereby the convict got released based on habeus corpus and the case is currently on appeal.

114. In addition, the Independent Prosecutor has filed a charge with respect to the failure of the Pacific Savings Bank involving money laundering. The assessors welcome the decision to create the position of an independent prosecutor and encourage the authorities to provide the resources and other support necessary to successfully and fully investigate the failure of the Pacific Savings Bank.

115. Given the size of Palau, the number of prosecutions and cases tried before the courts seems to be appropriate.

### 2.1.2. Recommendations and Comments

- Ensure that the following acts and activities constitute predicate offenses to money laundering: in the categories of participation in an organized criminal group and racketeering, illicit arms trafficking, illicit trafficking in stolen and other goods, counterfeiting and piracy of products, environmental crimes, extortion, piracy, and insider trading and market manipulation.
- Amend the money laundering offense to expressly include “knowingly using criminal proceeds.”
- Amend the definition of the term “proceeds of crime” to expressly cover direct as well as converted criminal proceeds.

### 2.1.3. Compliance with Recommendations 1 & 2

	Rating <sup>1</sup>	Summary of factors underlying rating
<b>R.1</b>	<b>PC</b>	<p>Palau does not provide for any predicate offenses in the categories of participation in an organized criminal group and racketeering, illicit arms trafficking, illicit trafficking in stolen and other goods, counterfeiting and piracy of products, environmental crimes, extortion, piracy, and insider trading and market manipulation.</p> <p>The money laundering offense does not clearly extend to “the use of criminal proceeds.”</p> <p>The definition of “proceeds of crime” does not expressly cover direct as well as converted proceeds.</p>
<b>R.2</b>	<b>C</b>	

<sup>1</sup> The ratings are based only on the essential criteria, and defined as follows:

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

## **2.2. Criminalization of Terrorist Financing (SR.II)**

### **2.2.1. Description and Analysis**

#### Legal Framework:

116. The financing of terrorism is criminalized in Section 23–26 of the Counter-Terrorism Act of 2007 (CTA). The authorities could not provide the assessors with the required information to determine whether Palau has signed and ratified the UN Convention for the Suppression of the Financing of Terrorism. However, a UN website indicates that Palau acceded to that convention in November 2001. The same website indicates that Palau signed and ratified 10 out of 12 international conventions and protocols relating to the fight against terrorism. While Palau has signed the International Convention for the Suppression of Acts of Nuclear Terrorism, it has neither signed nor ratified the Convention on the Physical Protection of Nuclear Material.

#### Criminalization of Financing of Terrorism (c. II.1):

117. Palau has criminalized the financing of terrorism through Subchapter II (Sections 23–26) of the CTA. Section 24 of the CTA provides that

“any person who by any means, directly or indirectly, or as an accomplice, solicits, provides or collects property, or provides financial or other services, or organizes or directs others to solicit, provide or collect property or provide financial or other services, with the intention that they should be used or in the knowledge that they are to be used, in full or in part:

(1) for Terrorism

(2) for the benefit of persons who engage in Terrorism, or for the benefit of entities owned or controlled, directly or indirectly, by persons who engage in Terrorism; or

(3) for the benefit of persons or entities acting on behalf of or at the direction of any person referred to in (2)

commits a crime, the Financing of Terrorism...”

118. Section 3 of the CTA stipulates that the term “terrorism” covers both “terrorism offenses” and “terrorist acts.”

119. *Terrorist Acts:* The CTA, Section 3 (kk) defines “terrorism offenses” as any crime established by (1) the CTA; (2) the PNC and declared to be a terrorism offense by the OEK; (3) an international terrorism convention; as well as (4) any crime established under the law of a foreign State if the act had constituted a terrorism offense under Palau law.

120. Section 3 (q) CTA lists all conventions covered by the term “international terrorism conventions,” whereby the list includes all nine terrorism conventions listed in the Annex to the UN Convention for the Suppression of the Financing of Terrorism. In addition to the offenses defined in the listed conventions, the definition would also cover any terrorism convention to which Palau becomes a State Party. From the language of the provision, it would therefore appear that all crimes defined in the 12 international terrorism conventions listed in Section 3 (q) would automatically fall within the scope of the definition of “terrorism offenses,” regardless of whether or not Palau has signed and ratified the convention. This view was also held by the authorities.

121. Therefore, even though the law does not use the definition of “terrorist acts” as contained in the FATF glossary, all treaty offenses are covered by Palau’s definition of “terrorism offenses” and are, therefore, within the scope of the terrorism financing offense.

122. *Generic Terrorism Offense:* The CTA, Section 3 (mm), defines “terrorist act” as “any act that is intended, or by its nature or context can be reasonably regarded as intended, to advance political, ideological, or religious cases, by intimidating the public or any portion of the public, or by compelling or attempting to compel a government or an international or regional organization to do or refrain from doing any act” and (1) involves the seizing and detaining, and threatening to kill, injure, harm or continue to detain another person; (2) endangers the life of any person; (3) creates a risk to the health or the safety of the public; (4) endangers the national security or national defense of any country; (5) involves substantial damage to property; (6) involves the hijacking, seizure, or sabotage of any conveyance or of any fixed platform; (7) involved any act that is designed to disrupt or destroy an electronic system; or (8) involves any act that is designed to disrupt the provision of essential emergency services.

123. For an act to be covered by the definition of terrorist act, it is required that any of the conducts listed in (1)(8) is involved. In contrast, the generic offense as defined in the FATF standard considers that any act intended to cause death or bodily injury to a civilian to be a terrorist act when the purpose of such an act is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing an act. While the definitions of the two offenses do not match, in practice the scopes are equally broad and, therefore, the generic offense as defined in Section 3 (mm) meets the international standard.

124. *Individual Terrorist:* As outlined above, Section 24 CTA criminalizes both the financing of terrorism as well as the financing, directly or indirectly, of individual terrorists. The scope of the definition explicitly includes the financing of natural and legal persons and also covers the financing of a person or entity that acts on behalf of or at the direction of an individual terrorist.

125. *Terrorist Organization:* While Section 24 CTA specifically refers to the financing of terrorist acts and individual terrorists, no such reference is made to the financing of terrorist organizations. However, Section 24 (2) is defined broadly to cover the provision of funds “for the benefit of persons who engage in Terrorism, or for the benefit of entities owned or controlled, directly or indirectly, by persons who engage in Terrorism,” the provision could be used to also prosecute the financing of a terrorist organization. The authorities confirmed that should the case arise, they would prosecute the financing of a terrorist organization through application of Section 24 (2) CTA.

126. Section 3 (nn) CTA defines terrorist organization as “a group composed of two or more persons, whether organized or not, that engage in terrorism,” whereby Section 3 (h) CTA stipulates that anybody is considered to “engage in terrorism” who in an individual capacity or as a member of an organization, perpetrates, commits, carries out or incites others to commit or carry out, who threatens, attempts, solicits, conspires to carry out or commit, and who prepares or plans, gathers information on potential targets for, solicits, collects or provides property or other things of value to be used for terrorism, by a terrorist organization or to solicit, recruit or train a person to engage in terrorism or for membership in a terrorist organization. The definition further covers the commission or carrying out of an act that the actor knows, or reasonably should know, affords material support for



terrorist organizations, an individual engaging in terrorism or for terrorism pursuant to Section 3 CTA.

127. Section 5 provides that it shall be a crime for any person to “knowingly, by any means, directly or indirectly” engage in a terrorist act.

128. Section 6 (c) stipulates that a person also commits a crime if that person knowingly attempts, conspires to commit, participates as an accomplice in or organizes or directs others to commit any crime established by the CTA.

129. Based on Section 24 (2), the financing of terrorist organizations may therefore be prosecuted under Palauan law. While the CTA’s definition of “terrorist organization” does not entirely match the one contained in the FATF glossary, in practice Sections 3 (h) and (nn) in connection with Sections 5 and 6 (c) seem to cover all aspects of the FATF’s definition and any person who finances a group of two or more persons that commits, or attempts to commit, terrorist acts by any means directly or indirectly, unlawfully and willfully, or participates as an accomplice in terrorist acts, or organizes or directs others to commit terrorist acts, or contributes to the commission of terrorist acts by a group of persons, may be held criminally liable for the commission of the terrorism financing offense.

130. *II.1.b.:* The CTA, Section 3 (n), defines “property” as real and personal property of every kind whatsoever. The authorities argued that the definition would cover legitimate as well as illegitimate funds, corporeal as well as incorporeal property and all assets representing financial value, including claims and interests in such assets. The assessors agree that the language of the definition would in fact suggest that the term is to be interpreted broadly. However, as the financing of terrorism offense has never been tried before the courts, no case law was available to confirm this interpretation of the definition.

131. *II.1.c.:* Section 24 (b) expressly stipulates that for an act to constitute the offense of terrorist financing, it is not necessary that the property was actually used to commit or carry out a terrorism offense or terrorist act. The language of the provision (provides funds for the benefit of terrorists) would suggest that regarding the financing of individual terrorists and terrorist organizations, it is not necessary that the funds collected/provided were linked to a specific act on the list.

132. *II.1.d.:* As discussed above, Section 6 (c) CTA stipulates that sanctions for an offense may not only be applied to completed crimes but also to attempted crimes and for any participation in attempted crimes.

133. *II.1.e.:* Section 6 (c) CTA provides that not only the immediate offender is committing the offense but everybody who directs, conspires to commit, participates as an accomplice in or organizes or directs others to commit any crime established by the CTA. Anybody who participates as an accomplice, organizes or directs another, or contributes in the commission of terrorist financing may therefore be criminally liable for the commission of the offense.

Predicate Offense for Money Laundering (c. II.2):

134. As discussed under criterion 3 of Recommendation 1, all felonies are predicate offenses for money laundering, whereby any crime punishable for a period of more than one year is considered a

felony. Pursuant to Section 6 CTA, the sanctions for financing of terrorism are imprisonment of 10 years to life, depending on the circumstances. Terrorism financing is, therefore, a felony and constitutes a predicate offense for money laundering.

Jurisdiction for Terrorist Financing Offense (c. II.3):

135. Pursuant to Section 4 CTA, Palau's criminal laws are applicable to all conduct committed (1) in Palau, (2) by a Palau citizen or national, (3) on board of an aircraft or ship that is registered under Palau law, operating under a Palau flag or which lands in the territory of Palau with the alleged offender still on board or that was leased by a person that has its principal place of business in Palau or who is a resident of Palau, and (4) against or on board a fixed platform located on Palau's continental shelf. Palau further claims jurisdiction over any crime that was directed against Palau citizens, the government of Palau, and over crimes that were committed by a resident of Palau or that were carried out in a foreign country by a citizen of another country if the perpetrator is now located in Palau and may not be extradited.

136. In all these cases, terrorism financing committed is a criminal offense in Palau, regardless of whether conduct is a criminal offense in the country where it occurred or of which the perpetrator is a citizen of.

The Mental Element of the FT Offense (applying c. 2.2 in R.2):

137. It is a fundamental principle of Palau criminal law that the intentional element of any crime may be inferred from objective factual circumstances. The Palau Supreme Court has held in various cases (Republic of Palau vs. Wakakoro Sisior and Demai Temol; Republic of Palau vs. Kikuo) that circumstantial evidence as evidence, which proves a fact or facts from which inferences may be drawn, is as valid as direct evidence and may be used to prove all elements of a crime. This would also be applicable with respect to the financing of terrorism offense and the mental element of the offense may, therefore, be inferred from objective factual circumstances.

Liability of Legal Persons (applying c. 2.3 & c. 2.4 in R.2):

138. "Person" is defined in Section 3 CTA to include both natural and legal persons and any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation. Furthermore, Section 8 CTA expressly stipulates that "legal persons and any foreign government shall be liable in the same manner and to the same extent as any natural person for any terrorism offense," whereby the applicable sanction is ten times the fine applicable to a natural person. The provision further establishes that to prove the intentional element of a legal person, it is sufficient to show that a director, officer, or agent who engaged in the conduct acted intentionally.

139. In addition to the fines mentioned above, legal persons may be banned for a minimum of five years from conducting business within Palau, be ordered to close their premises permanently, to be dissolved, or required to publish the judgment against it in the media. The provision expressly states that those fines are available in addition to the sanctions described earlier and are not precluded by the fact that the person is also being held criminally liable.

Sanctions for FT (applying c. 2.5 in R.2):

140. Financing of terrorist offenses pursuant to Section 24 are sanctioned with imprisonment of 20 years to life and a maximum fine of \$1,000,000 or with imprisonment of 10 years to life and a maximum fine of \$1,000,000 if the act resulted in the death of a natural person. The authorities did not provide a suitable explanation for concerns raised by the mission about the fact that the imprisonment period is shorter in cases where an act results in the death of a person.

141. If a defendant derived profits or other proceeds from the commission of the crime, an additional fine amounting to twice the gross profits or proceeds are available if that sum is higher than \$1,000,000.

142. Pursuant to Section 9 CTA, additional civil penalties may be imposed for any crime established by the CTA upon proof by preponderance of the evidence that a person committed an offense. The penalty may not exceed \$25,000,000. The court shall further order any person convicted of a crime established by the CTA to reimburse Palau for any expenses incurred to investigate and prosecute the offense.

143. In comparison, the United States sanctions the financing of terrorism with imprisonment of up to 15 years and a fine. However, if an act results in the death of a person, the penalty is imprisonment of any terms of years or for life.

Effectiveness:

144. The CTA has only been passed in April 2007 and the FT offense has not been tested before the courts. Palau has not conducted any investigations or prosecutions relating to terrorist financing; therefore no sanctions have ever been applied for the offense. No convictions with respect to terrorism financing have ever been obtained. Overall, the assessors did not identify any particular vulnerability to terrorist financing.

### **2.2.2. Recommendations and Comments**

- Even though the law seems to criminalize all aspects of “financing of terrorist organizations” required by the international standard, for the sake of clarity it is recommended to add a reference in Section 24 CTA to explicitly criminalize the financing of terrorist organizations.
- Amend the definition of the term “property” to expressly cover legitimate as well as illegitimate funds, corporeal as well as incorporeal property and all assets representing financial value, including claims and interests in such assets.
- The authorities should consider revisiting the fact that the imprisonment period for financing of terrorism offenses is shorter in cases where an act results in the death of a person.

### **2.2.3. Compliance with Special Recommendation II**

	Rating	Summary of factors underlying rating
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<b>SR.II</b>	<b>LC</b>	The terrorism financing offense does not clearly extend to legitimate funds.  The lack of investigations, prosecutions, and convictions for terrorist financing make it difficult to assess the effectiveness of the legal framework.
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## **2.3. Confiscation, freezing and seizing of proceeds of crime (R.3)**

### **2.3.1. Description and Analysis**

#### Legal Framework:

145. Sections 33 and 34 of the MLPCA provide for conviction based confiscation of property used in the money laundering offense. Confiscation is the “permanent deprivation of property by final order of the Supreme Court after all appeals are exhausted.” In practice, confiscation orders may be appealed within 30 days of issuance but the government may only enforce confiscation orders after all appeals are exhausted.

146. Section 33 provides that the Supreme Court may issue an order for the confiscation of the “property forming the subject of the offense, including income and other benefits there from.”

147. Section 34 stipulates that the Supreme Court may confiscate “the property over which a criminal organization has power of disposal” if it has been established beyond a reasonable doubt that the individual convicted of the offense is a member of that criminal organization.

148. “Property” is defined in line with the FATF standard as “assets, real property, or personal property of every kind, whether moveable or immovable, tangible or intangible, and legal documents or instruments evidencing an interest in such assets.” “Property forming the subject of the offense” is not defined in the law but the authorities held the view that the term would include the laundered property as well as the instrumentalities of the money laundering offense.

149. With respect to terrorism financing, Sections 7 and 10 of the CTA provide for, respectively, criminal and civil forfeiture of property related to the commission of the offense and Section 7 (d) provides for freezing of property in specific circumstances. Freezing, as defined by the CTA, means “to prohibit the transfer, conversion, disposition, or movement of funds or other assets on the basis of, and for the duration of the validity of, an action initiated by a competent authority or court under a freezing mechanism.”

150. Section 7 of the CTA provides that any person convicted of a terrorism offense shall be required to forfeit to Palau, irrespective of any other provision of law, any property used or intended to be used in the commission of the offense, property constituting the proceeds of or property derived from the proceeds of, directly or indirectly, from the offense or any property used in any manner, wholly or partly, to commit or facilitate the commission of the offense. The applicable standard is “preponderance of the evidence that any particular property is within one or more of the listed categories.”

151. Section 10 of the CTA further provides for civil forfeiture upon application by the Attorney General and proof by a preponderance of the evidence that the property in question is owned,

possessed, used or intended to be used by a person in the commission of or to facilitate a terrorist act or constitutes, is derived from, or is proceeds obtained directly or indirectly from the terrorist act.

Confiscation of Property laundered, proceeds from, instrumentalities used or intended to use in the commission of ML or predicate offense (c.3.1):

*Confiscation of property related to ML:*

152. Section 33 of the MLPCA specifically refers to the confiscation of “property forming the subject of the offense, including income and other benefits” and therefore allows for the confiscation of the property laundered as well as any proceeds from the money laundering offense, including investment yield and substitute assets. While the provision does not explicitly refer to property derived from or obtained, directly or indirectly, through an offense, the authorities stated that all such property would be covered by the provision.

153. The MLPCA does not define the scope of “property forming the subject of the offense.” The authorities clarified that the term would extend to instrumentalities used in the commission of the money laundering offense but would not include instrumentalities that were merely intended for use in the commission of the money laundering offense. The authorities did not provide the assessors with any case law to support their view.

154. The applicable standard to prove that certain property was laundered or constitutes the proceeds from or instrumentalities used for the commission of the offense is “beyond a reasonable doubt.”

155. If an individual convicted of money laundering is a member of a criminal organization, all of the organization’s property may be subject to confiscation, regardless of whether the property is related to the commission of the money laundering offense and whether the purpose of the criminal organization is or includes money laundering. Unlike Section 33, Section 34 is not limited to property that is “subject to the offense” and would, therefore, cover any property including proceeds laundered, proceeds from and instrumentalities used in or intended to be used in the commission of the money laundering offense.

156. Therefore, Palauan law allows for the confiscation of property laundered, proceeds from as well as instrumentalities used in the commission of a money laundering offense but does not generally allow for the confiscation of instrumentalities merely intended to be used for the commission of the money laundering offense.

*Confiscation of property related to predicate offenses:*

157. Sections 33 and 34 MLPCA do not allow for the confiscation of proceeds from, instrumentalities used in or intended to be used in the commission of a predicate offense, whether or not there is no money laundering charge laid. The authorities confirmed that Palauan law does not allow for the confiscation of proceeds from or instrumentalities used in or intended to be used in the commission of a predicate offense.

*Confiscation of property related to terrorism financing:*

158. Section 7 of the CTA provides that any person convicted of a terrorism offense shall be required to forfeit to Palau, irrespective of any other provision of law, any property used or intended to be used in the commission of the offense, property constituting the proceeds of or property derived from the proceeds of, directly or indirectly, from the offense or any property used in any manner, wholly or partly, to commit or facilitate the commission of the offense. Once a conviction for a terrorism offense has been passed, the standard applicable to prove that any particular property falls within one or more of the listed categories is “preponderance of the evidence.”

159. Section 10 of the CTA further allows for civil forfeiture upon application by the Attorney General if it has been proven by a preponderance of the evidence that the property in question is owned, possessed, used or intended to be used by a person in the commission of a terrorist act constitutes, is derived from, or is proceeds obtained directly or indirectly from the terrorist act, or was used or intended to be used in any manner or part to commit or to facilitate the commission of a terrorist act. Within 14 days, the Attorney General has to give written notice to any person known to own, control or have an interest in the subject property. Furthermore, any person claiming to have an interest in the forfeited property has to be given an opportunity to be heard in the proceedings. Upon proof that this person has a bona fide interest in the property, and is not a member of a terrorist group, the court shall order that such interest shall not be affected by the civil forfeiture order and the court shall declare the nature and extent of such interest. Forfeiture orders pursuant to Section 10 CTA may be appealed within 30 days of issuance of the order.

160. Therefore, Palauan law allows for the confiscation of property intended to be used to finance terrorism as well as proceeds from, instrumentalities used or intended to be used in the commission of a terrorism financing offense.

Confiscation of Property related to ML, FT or other predicate offenses including property of corresponding value (c. 3.1.1.):

161. While the law does not expressly allow for the confiscation of “property of corresponding value,” Section 33 MLPCA provides that in addition to the confiscation of proceeds, property laundered and instrumentalities used in the commission of the money laundering offense, the Supreme Court may also issue an order for confiscation of an amount equal to the enrichment obtained by the convicted offender during a period of three years preceding the conviction.

162. In practice, this provision would allow for the confiscation of property corresponding to the value of proceeds from the money laundering offense. However, the provision would not cover property of corresponding value to the property laundered, proceeds from the predicate offense, or to any instrumentalities used for or intended to be used in the commission of the money laundering or predicate offense.

163. Section 7 (b) of the CTA provides that in cases where property subject to confiscation cannot be located, identified or recovered, the Supreme Court may confiscate property of equal value from the owner of the property in question. The provision, therefore, allows for the confiscation of proceeds from as well as any instrumentalities used or intended to be used in the commission of a terrorist financing offense.

Confiscation of Property Derived from Proceeds of Crime (c. 3.1.1 applying c. 3.1):

164. Section 33 (a) MLPCA expressly stipulates that a confiscation order may be issued for any income and other benefits derived from the commission of the offense and against any person to whom the property belongs, unless the person can establish that (1) there is no connection between the property and the predicate or money laundering offense or (2) he was a bona fide purchaser for value, for services of corresponding value, or on any other legitimate grounds.

165. Therefore, all property that is derived directly or indirectly from proceeds of crime and regardless of whether it is held by the offender or a third party may be subject to confiscation.

Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2):

166. Palau's law allows the seizing of property in the course of investigations (Section 27) as well as the freezing of property by order of the Supreme Court upon showing of a probable cause (Section 28). The law does not define the terms "freezing" and "seizing."

167. Although Section 28 is entitled "Provisional Measures," the text makes reference to confiscation orders. The assessors could not establish how Section 28 could in practice be applied with respect to confiscation orders, as Palauan law provides for conviction-based confiscation only and expressly stipulates that confiscation orders are final orders. It is, therefore, unclear how confiscation orders could possibly be limited to 3 months absent a conviction or how confiscation orders may automatically expire. The assessors concluded that the reference to confiscation orders in Section 28 must be a drafting mistake and will, therefore, be disregarded for the purpose of this assessment.

168. Section 27 of the MLPCA provides that "all members of Palau's law enforcement agencies responsible for the detection and suppression of money laundering offenses shall be empowered to seize property connected with the offense under investigation, as well as any evidentiary items that may make it possible to identify such property." The authorities stated that in practice, law enforcement officers would have to obtain a court order based on the showing of probable cause prior to seizing any property. Pursuant to Section 28 MLPCA, absent a conviction for money laundering or an application for extension of the order, a seizing order expires automatically after 3 months. The Attorney General may apply to the Supreme Court for renewal of the order upon showing of a good cause for the renewal. There is no limit on the number of renewals. Initially, the party affected by the order would not receive a notice. However, the Supreme Court may hear the other side in the course of extension proceedings.

169. Pursuant to Section 28 MLPCA, the Supreme Court, upon motion by the OAG or the FIU, may issue a temporary order to freeze capital and financial transactions relating to property that may be liable to seizure or confiscation. The authorities stated that property may be considered "liable to seizure or confiscation" as soon as an investigation for an offense has been initiated and, therefore, Sections 28 MLPCA may be applied in the pre-prosecution stage.

170. As in the case of seizing orders, freezing orders pursuant to Section 28 MLPCA are valid for 3 months, with the possibility of unlimited extensions by the Supreme Court. While the initial freezing would be ex-parte, the party affected by the freezing order would be heard in the course of extension proceedings.

171. Both freezing and seizing orders may be lifted by the Supreme Court upon motion by the OAG, the FIU, or the beneficial owner of the affected property. Grounds for lifting of provision measures include the affected person's inability to cover the basic living expenses, a bond received by a third party, or the finding of new evidence defeating the probable cause for issuance of the measures.

172. Section 7 (d) of the CTA provides that any weapons of mass destruction, plastic explosives, and nuclear material shall be seized, confiscated, and forfeited to Palau and the Minister of Justice shall provide for their destruction or other appropriate disposition.

173. Section 26 (1) CTA provides that any Palau law enforcement officer or customs official may seize and detain any property that the officer has probable cause to believe was derived from or intended for terrorism, financing of terrorism, or terrorist organizations.

174. Section 26 (b) CTA further stipulates that property of or intended for terrorist organizations shall be frozen, seized, and detained where the organization has been designated as a terrorist organization by the UN Security Council or by the Minister of Justice or where there is probable cause to believe that the entity involved is a terrorist organization. The provision does not extend to property held by individual terrorists or somebody who intends or finances terrorist organizations, individual terrorists, or terrorist acts.

175. Section 26 (1) CTA seems to allow for the seizing of property constituting the proceeds from, or instrumentalities used in or intended to be used for terrorism financing. However, Palauan law does not seem to allow for the freezing of property related to terrorism financing.

#### Ex Parte Application for Provisional Measures (c. 3.3):

176. Sections 27 and 28 MLPCA do not explicitly provide for an application of seizure and freezing measures ex parte or without prior notice. However, it appears from the language of the provisions that the suspect would not have to be informed prior to the application of the measures. The authorities confirmed that initial freezing and seizing orders are made ex parte. The parties affected may be heard in the course of extension proceedings.

177. Section 7 (e) CTA stipulates that a temporary restraining order and seizure warrant may be entered upon application of the Attorney General without notice or opportunity for a hearing when an information or complaint has not yet been filed with respect to the property, where there is probable cause to believe that the property with respect to which the order it sought would, in the event of conviction, be subject to forfeiture and exigent circumstances exists that place the life or health of any person in danger.

#### Identification and Tracing of Property subject to Confiscation (c. 3.4):

178. Section 24 MLPCA provides that if there is probable cause to suspect that the items listed below are or may be used by a person suspected of money laundering, the FIU and the OAG may (1) monitor bank accounts (2) access computer systems, networks, and servers (3) place under surveillance or tap phone lines, facsimile machines, or electronic transmission or communication facilities and (4) inspect communications of notarial and private deeds, or of bank, financial, and



commercial records. Absent probable cause, the listed operations may only be conducted based on a warrant issued by the Supreme Court. All investigations and all applications for issuance of a warrant are filed under seal and are kept confidential until charges are brought against the suspect. Where appropriate, the charge may remain under seal until completion of all related investigations. The measures described are available as soon as there is sufficient information to trigger a criminal investigation.

179. Section 25 MLPCA provides that no punishment may be imposed on officials competent to investigate money laundering for the commission of the money laundering offense if the conduct occurred within the scope of an undercover operation or for controlled delivery.

180. No such measures are available with respect to property relating to terrorist financing.

Protection of Bona Fide Third Parties (c. 3.5):

181. As outlined above, Section 33 (a) MLPCA provides that a confiscation order may be issued against any person to whom the property subject to confiscation belongs, and regardless of whether or not that person is the convicted offender. However, the provision protects third parties that can establish that (1) there is no connection between the property and the predicate or money laundering offense or (2) he is a bona fide purchaser for value, for services of corresponding value, or based on any other legitimate grounds. Therefore, bona fide third parties are protected in line with Section 12 of the Palermo Convention.

182. Section 7 (f) of the CTA stipulates that the provisions of Section 7 should be implemented without prejudice to the property rights of third parties acting in good faith.

183. With respect to forfeited property, if any person claiming to have an interest in the property subject to forfeiture can prove that he has a bona fide interest in the property, and is not a member of a terrorist group, the court shall order that such interest shall not be affected by the civil forfeiture order and the court shall declare the nature and extent of such interest. However, if a person obtained such an interest after the property has been used in the commission or attempted commission of a terrorist act, such a declaration may only be issued if the person is a bona fide purchaser for value and without reason to suspect that the property was used in the commission or attempted commission of a terrorist act.

Power to Void Actions (c. 3.6):

184. Section 35 MLPCA stipulates that the Supreme Court may void any instrument upon determination that it serves to fraudulently convey property to prevent confiscation thereof.

185. Section 7 (c) of the CTA stipulates that any instrument executed free of charge or for a consideration *inter vivos* or *causa mortis* and to safeguard property from confiscation measures is void. In the case of nullification of a contract involving payment, the buyer is reimbursed only for the amount actually paid.

186. Section 10 (c) further stipulates that the court may set aside any conveyance or transfer of any property which was seized, forfeited, or is subject to seizure or forfeiture under Sections 7, 9, or 10 of

the CTA, unless the conveyance or transfer was made for value to a person acting in good faith and without notice.

187. “Instrument” is not defined in either law but the authorities confirmed that the term would cover any written action, whether contractual or otherwise.

Additional Elements (Rec. 3)—Provision for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (c. 3.7):

188. If it can be established that a convicted money launderer is a member of a criminal organization, Section 34 allows for the confiscation of “the property over which a criminal organization has power of disposal.” With respect to money laundering, Palauan law only provides for conviction-based confiscation and does not apply the concept of civil forfeiture. With respect to terrorism financing, Section 10 CTA provides for civil forfeiture, whereas Section 7 provides for conviction-based confiscation.

189. Palauan law follows the concept of “reverse burden of proof” and based on Sections 28 and 33 MLPCA an offender, therefore, may avoid confiscation by proving that property has a lawful origin.

Effectiveness:

190. Palau has issued 2 freezing orders, the first one upon request by the United States and involving an amount of \$100,000 and the second one in the course of domestic proceedings and involving an amount of approximately \$60,000. Both of the freezing orders led to the confiscation of property. In the first case, all assets frozen were later confiscated. With respect to the second case, the authorities stated that not all the money frozen could be confiscated since one of the freezing orders expired and was only renewed a few days later. In the two days that the accounts were not frozen, the party investigated managed to draw all funds from the account and thus avoid confiscation thereof. While assessors could not establish the exact amounts of money lost due to expiration of the first freezing order, the amount seems to have been over or around \$100,000.

191. The authorities stated that seizing orders would frequently be used for evidentiary purposes. No provisional measures or confiscation measures have ever been applied with respect to property believed to be the proceeds of or involving instrumentalities used for or intended for use in the commission of a terrorist financing offense.

### **2.3.2. Recommendations and Comments**

- Amend the definition of “property subject to the offense” to expressly include the laundered property.
- Amend Section 33 MLPCA to expressly allow for the confiscation of all instrumentalities used or intended to be used in the commission of a money laundering offense.

- Amend the law to allow for confiscation of all direct and indirect proceeds of, instrumentalities used or intended for use in the commission of a predicate offense as well as property of corresponding value to such proceeds or instrumentalities.
- Amend the law to allow for the confiscation of property of corresponding value to property laundered and instrumentalities used in or intended to be used in the commission of a money laundering offense.
- Amend the law to provide for freezing of property related to terrorism financing.
- Amend the law to provide for measures to identify and trace property relating to terrorism financing.

### 2.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
<b>R.3</b>	<b>PC</b>	<p>The law does not allow for the confiscation of proceeds of, instrumentalities used or intended for use in the commission of a predicate offense for money laundering.</p> <p>The law does not allow for the confiscation of property of corresponding value to property laundered, instrumentalities intended for use in the commission of a money laundering offense, as well as proceeds of and instrumentalities used in or intended for use in the commission of any predicate offense.</p> <p>No freezing measures are available for property related to terrorism financing.</p> <p>No measures are in place to identify or trace property relating to terrorism financing.</p>

## 2.4. Freezing of funds used for terrorist financing (SR.III)

### 2.4.1. Description and Analysis

Legal Framework:

192. Under Special Recommendation III, countries should have laws and other procedures in place that enable them to freeze without delay funds and other assets of persons designated pursuant to United Nations Security Council Resolutions (UNSCR) 1267 and 1373. Laws and other measures should also provide for provisional measures, including the freezing and/or seizing of property, to prevent any dealing, transfer, or disposal of property subject to confiscation. Such freezing should take place without delay and without prior notice to the designated persons involved. In practice, countries should designate a specific authority responsible for receiving and disseminating the UNSCR 1267 lists and the requests made under UNSCR 1373.

193. Section 26 (b) of CTA provides that the property of, or intended for, terrorist organizations shall be frozen, seized and detained, where the organization has been designated as a terrorist

organization by the United Nations Security Council, or by the Minister of Justice pursuant to regulations promoted pursuant to the CTA, or where there is probable cause to believe that the entity involved is a terrorist organization.

194. Section 13 (l) CTA further stipulates that it is the Minister of Justice's duty to take appropriate measures to implement all provisions of the CTA, including ordering the freezing of property, by administrative decision, of individuals and organizations designated by the United Nations Security Council acting under Chapter VII of the UN Charter.

195. No administrative decisions pursuant to Section 13 (l) CTA or regulations pursuant to Section 26 (b) CTA have ever been issued.

196. It should be noted that at the time of the assessment, no funds or assets in Palau had ever been linked with terrorism, terrorists or terrorist organizations.

Freezing Assets under S/Res/1267 (c. III.1):

197. Pursuant to Section 13 (l), the Minister of Justice is the designated authority to order the freezing of funds and property of individuals or entities designated pursuant to UNSCR 1267. While it would appear that Section 13 (l) provides the Ministry of Justice with the power to issue, through administrative decision, orders to freeze funds or other assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with Resolution 1267, no specific procedures are in place on how to issue, administer, and enforce such freezing orders. Nowhere in the law is it required that such freezing take place without delay and without prior notice to the designated persons involved.

198. The authorities stated that in practice, any lists of designated terrorists pursuant to Resolution 1267 would be received by the Minister of State and forwarded to the Attorney General rather than the Ministry of Justice. The assessors could not establish how many lists or updates to the lists were received by the Minister of State and how many of those were in fact forwarded to the Attorney General.

199. Both the Attorney General and the Minister of State were of the view that in practice, the freezing of accounts of any person designated pursuant to Resolution 1267 would require a court order and that despite the explicit language of Section 13 (l), no freezing action could take place merely based on an administrative decision by the Ministry of Justice. The Attorney General stated that absent a freezing order by a Palauan court, financial institutions could not be held liable for failure to freeze funds or assets of such designated individuals or entities.

200. Therefore, absent a court order issued with respect to specific assets or funds, persons or entities holding funds of persons or entities designated pursuant to Resolution 1267 are not required, by law, to freeze such funds without delay and without giving prior notice.

Freezing Assets under S/Res/1373 (c. III.2):

201. While Section 1 of the CTA explicitly refers to member states obligations pursuant to UNSCR 1373, no other provision of the law provides for any specific measures regarding the Resolution.

202. As Sections 26 (b) and 13 (l) merely refer to the Minister of Justice's obligations with respect to persons and entities designated pursuant to Resolution 1267 but make no mention of Resolution 1373, it is unclear who would be the designated authority to receive and issue designations pursuant to Resolution 1373. Nowhere in the law is it required that funds or assets of persons or entities designated by Palau or any other jurisdiction pursuant to Resolution 1373 are to be frozen without delay and without prior notice to the designated persons involved.

203. The authorities stated that in practice, any requests to freeze assets or funds of individuals or groups designated pursuant to Resolution 1373 would be received by the Minister of State and forwarded to the Attorney General. According to the Ministry of State, in 2007 Palau received two or three requests from the United States for the freezing of assets of designated individuals. According to the Ministry of State, no other country ever made a request pursuant to Resolution 1373. At the time of the on-site mission, no assets or funds of designated individuals or entities were found in Palau and neither the Ministry of Justice nor the Attorney General had ever issued any designations pursuant to Resolution 1373.

204. All authorities involved in the process stated that freezing of accounts of any person designated pursuant to Resolution 1373 would require a Palauan court order. The Attorney General stated that absent a freezing order issued by the court, financial institutions could not be prosecuted for failure to freeze funds or assets of such designated individuals or entities.

205. Therefore, absent a court order issued with respect to specific assets or funds, persons or entities holding funds of persons or entities designated pursuant to Resolution 1373 are not required by law to freeze such funds without delay and without giving prior notice.

206. Both the Attorney General and the Minister of State stated that no formal screening procedures were in place to establish whether or not a request received was based on reasonable grounds or whether there was a reasonable basis to initiate any freezing action. No such screening seems to be done in practice.

#### Freezing Actions Taken by Other Countries (c. III.3):

207. Pursuant to Section 15 CTA, the MLA Act also applies with respect to an investigation or proceeding relating to terrorism. The only provision in Section 14 of the MLA Act dealing with enforcement of foreign court orders is Section 14, which provides that the Attorney General, upon request by a foreign state, may arrange for the enforcement of a foreign restraint order. The MLC Act defines "foreign restraint order" as "a foreign court order made relating to a serious offense to restrain a person or persons from dealing with property."

208. Section 10 MLA Act further provides that the Supreme Court shall be authorized to adopt, recognize, and enforce foreign court orders certified or under seal, which shall have the rebuttable presumption of validity,

209. Therefore, based on Section 15 CTA in combination with Sections 10 and 14, the MLA Act would allow for the enforcement of foreign freezing orders in Palau.

#### Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):

210. The CTA defines “property” as real and personal property of every kind whatsoever. The authorities stated the definition would cover all funds and assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organizations and any fund or assets derived or generated from funds or other assets owned or controlled directly or indirectly by such persons or organizations. However, in the absence of clear freezing procedures, the assessors could not establish whether reporting entities would in fact be requested to freeze all such property.

Communication to the Financial Sector (c. III.5):

211. No formal procedures are in place to ensure that any lists or requests pursuant to Resolutions 1267 and 1373 are immediately communicated to the financial sector.

212. As stated above, the authorities stated that in the past, any lists or requests received pursuant to Resolutions 1267 or 1373 would be forwarded from the Minister of State to the Attorney General as the former head of the FIU, and the Attorney General then forwarded them to the financial institutions. Since the FIU was transferred to the FIC, no lists or requests have been received by Palau. Should the case arise, the Minister of State would now forward the lists or requests to the FIC for circulation to the financial sector.

213. However, through discussions with the financial institutions, it became apparent that in practice, those lists and requests were circulated on a sporadic basis at best. Only some financial institutions recall having received lists or updates to the lists and none of the DNFBPs recall ever having received any lists of designated individuals.

Guidance to Financial Institutions (c. III.6):

214. The authorities stated that they have never issued any guidance, formal or informal, to financial institutions and other persons or entities that may be holding targeted funds or other assets explaining their obligations in taking action pursuant to Resolutions 1267 and 1373. Financial institutions were never instructed to freeze any assets of designated persons but rather to crosscheck their client databases with the names on the circulated lists and requests. Financial institutions were requested to report back to the FIU within 10 days on whether or not a match has been found.

215. Both the Attorney General, as the former head of the FIU, and the Executive Commissioner of the FIC, as the current head of the FIU, stated that in the event that a financial institution would identify assets of a designated person, a court order would have to be obtained before any freezing action may be taken.

De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7):

216. No procedures for considering de-listing requests and for unfreezing of funds or other assets of de-listed persons or entities have ever been put in place.

Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):

217. Section 13 (l) of the CTA stipulates that any individual or organization whose property has been frozen pursuant to a designation by the Security Council and asserts that he/she was designated

as a result of an error may seek to have their name removed from the list by submitting a request to this effect within 30 days of the publication of the list to the agency who ordered the freezing, indicating all factors that could demonstrate the error. The agency's decision with respect to this request may be appealed to the Supreme Court but shall in no case be stayed or vacated pending a final decision by the court.

218. Pursuant to Section 13 (l) CTA, the Minister of Justice would have the power to take freezing measures, through administrative decision, with respect to property of individuals and organizations designated pursuant to Resolution 1267. However, all authorities involved are of the view that no freezing action may be taken by any Palauan authority absent an order issued by the Supreme Court. Unless the Minister of Justice issued freezing measures through an administrative decision, it is therefore difficult to see how Section 13 (l) would apply in practice.

Access to frozen funds for expenses and other purposes (c. III.9):

219. No specific procedures are in place for authorizing access to funds or other assets that were frozen pursuant to Resolution 1267 and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses

Review of Freezing Decisions (c. III.10):

220. No procedures are in place through which a person or entity whose funds or other assets have been frozen may challenge that measure with a view to having it reviewed by a court.

Freezing, Seizing and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11):

221. As discussed in Section 2.3., the CTA allows for conviction based confiscation (Section 7) as well as civil forfeiture (Section 10) of terrorism related funds. While Sections 7 and 26 CTA provide for the seizing of terrorist related funds, Palauan law does not allow for the freezing of property related to terrorism in situations other than those defined in Sections 13 (l) and 26 (b) CTA. Pursuant to Section 15 MLA Act, upon request by a foreign country the Attorney General may apply to the Supreme Court for a warrant to use special investigative techniques pursuant to Section 24 MLPCA to identify and trace property relating to terrorism. Pursuant to Sections 7 and 10 CTA, the court has the power to void actions intended to prejudice the authorities in their ability to confiscate terrorism related funds.

Protection of Rights of Third Parties (c. III.12):

222. Sections 7 (f) and 10 (b)(4) CTA provide for the protection of the property rights of bona fide third parties both in the course of confiscation and forfeiture proceedings.

Enforcing the Obligations under SR III (c. III.13):

223. Under Palauan law, financial institutions are under no obligations with respect to SR III and no civil, administrative or criminal sanctions are available for failure to take freezing actions or to report that assets and funds of a designated person or entity are held by a financial institution.

Additional Element (SR III)—Implementation of Measures in Best Practices Paper for SR III (c. III.14):

224. The measures set out in the Best Practices Paper for SR III have not been implemented.

Additional Element (SR III)—Implementation of Procedures to Access Frozen Funds (c. III.15):

225. No procedures have been implemented to authorize access to funds or other assets that were frozen pursuant to Resolution 1373.

#### **2.4.2. Recommendations and Comments**

- Provide for clear procedures on how the Ministry of Justice may issue, administer, and enforce the freezing of funds or other assets of persons designated pursuant to Resolution 1267.
- Designate an authority responsible for receiving and issuing designations pursuant to Resolution 1373.
- Put in place laws and procedures to ensure the freezing of terrorist funds and other assets of persons designated pursuant to Resolution 1373 without the need for a specific court order. Such freezing should take place without delay and without prior notice to the designated person involved.
- Put in place effective laws and procedures to examine and, where appropriate, give effect to freezing actions initiated under the mechanisms of other jurisdictions.
- Expressly provide that the term “property” as defined in the CTA includes funds and assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organizations and as well as any funds or assets derived or generated from funds or other assets owned or controlled directly or indirectly by such persons or organizations.
- Put in place effective mechanisms to ensure that all freezing actions taken pursuant to Resolutions 1267 and 1373 are immediately being communicated to the financial sector.
- Provide financial institutions and other persons or entities that may be holding targeted funds or assets with clear instructions and guidance regarding their obligations under the freezing mechanisms.
- Set out effective procedures for considering de-listing request and make them public.
- Put in place procedures for unfreezing in a timely manner the funds or other assets inadvertently affected by the freezing measures and make them public.
- Put in place clear procedures for access to funds in accordance with UNSCR 1452.
- Put in place procedures to challenge any freezing measures.



- Ensure effective monitoring of compliance with the obligations under SR III and provide for sanctions for noncompliance by financial institutions or other entities that may be holding targeted funds or assets.

#### 2.4.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	<p>Even though the Minister of Justice has the power to freeze, through administrative order, funds and assets of persons designated pursuant to Resolution 1267, in practice he has never made use of his powers and there are no procedures in place on how to issue, administer, and enforce such freezing actions.</p> <p>There is no designated authority responsible for receiving and issuing designations pursuant to UNSCR 1373.</p> <p>No laws and procedures are in place to freeze without delay and prior notice funds and other assets of persons designated pursuant to Resolution 1373.</p> <p>No effective mechanisms are in place to communicate to the financial sector any freezing actions taken pursuant to Resolutions 1267 and 1373.</p> <p>Financial institutions and other persons or entities that may be holding targeted funds or assets were never provided with clear instructions and guidance regarding their obligations under the freezing mechanisms.</p> <p>No effective procedures for considering de-listing request are in place.</p> <p>No procedures for unfreezing in a timely manner the funds or other assets inadvertently affected by the freezing measures are in place.</p> <p>No clear procedures for access to funds in accordance with UNSCR 1452 are in place.</p> <p>No procedures to challenge any freezing measures are in place.</p> <p>Financial institutions are under no obligation with respect to SR III and no civil, administrative, or criminal sanctions are available for failure to take freezing actions or to report that assets and funds of a designated person or entity are held by a financial institution.</p>

### 2.5. The Financial Intelligence Unit and its Functions (R.26)

#### 2.5.1. Description and Analysis

Legal Framework:

226. There are three legislations that govern the functions of the FIU. The primary legislation is the MLPCA of 2001, as amended in December 2007. The FIA and the CTA also have relevant sections concerning FIU functions. The FIA, which governs the FIC, is more pertinent now given

Presidential Executive Order No. 246 transferred the FIU from the OAG to the FIC on February 12, 2008.

227. The MLPCA gives the FIU significant law enforcement powers, including special investigation techniques, and freezing, seizure, and confiscation responsibilities. Based on these powers, the Palauan FIU can be classified as a law-enforcement-styled FIU, even though its current location is within the financial supervisor. FIU responsibilities and powers are also outlined in Section 49 of the FIA and in Section 25 of the CTA in respect of NPOs.

Establishment of FIU as National Center (c. 26.1):

228. The MLCPA of 2001 established the FIU within the OAG in 2001. However, this was not in the form of a separate office with new staff, but with the existing and already stretched OAG staff absorbing FIU functions, including the two staff of the CID staff based at the OAG. This remained the case until the FIU was transferred to the FIC. The FIC is carrying on essential FIU functions but without additional resources at this stage.

229. Palau amended Section 16 of the MLPCA in December 2007 to provide for the relocation of the FIU to the FIC. It now states that: “(a) A Financial Intelligence Unit (“FIU”) shall be created within the Office of the Attorney General or the Financial Institutions Commission by Executive Order of the President.”

230. According to Executive Order No. 246, the decision to transfer the FIU to the FIC was based on a review report by a PALP consultant. The review highlighted the potential conflict of interest between the Attorney General’s dual roles as the FIU head and as the Chief Prosecutor.

231. In addition, after an assistant attorney general, who headed the FIU up to 2006 and worked half time for the FIC, left the FIC and the OAG, the Attorney General assumed the position of the head of the FIU. Because of the multiple functions of the Attorney General, he could not devote sufficient attention to the FIU, consequently much of the relationships that were built with the banks and the FIC over the past years waned, in terms of proper implementation of the MLPCA.

232. The role of the FIU as specified in Section 17 of the MLPCA is as follows: “(a) The FIU shall be responsible for receiving, analyzing, and processing reports required pursuant to this Act. All officials, employees, and agents of the national government or any other government shall keep confidential the information thus obtained, which may not be used for any purposes other than those provided for in this Act; (b) The FIU may, upon suspicion of money laundering, terrorist financing, or a predicate offense, disseminate such information to domestic authorities as it deems necessary.”

233. Credit and financial institutions, financial intermediaries, over-the-counter exchange dealers, cash dealers, and alternative remittance systems, pursuant to Sections 5, 11, and 20 of the MLPCA, are required to submit CTRs and STRs to the FIU.

234. Section 49 of the FIA has parallel but slightly different STR reporting requirements to the FIC and the FIU. The FIA requires STR reporting prior to the completion of a suspicious transaction and then for the FIU to decide on whether the transaction should proceed as normal. Under the MLPCA, there is only the requirement for an STR to be submitted “immediately,” which would

include within a certain period after completion of the transaction. The FIA requirement could undermine the utility of STR information as it could result in inadvertent tipping off, in addition to other issues such as fairness and practical implementation challenges.

235. Customs, under the CCDA, provides the FIU with STRs and cross-border currency declaration forms of \$10,000 or more (or its equivalent in foreign currency).

236. NPOs must report, pursuant to Section 25 of the CTA, any cash donation in an amount equal to or greater than \$10,000 to the OAG and the FIU. Given the transfer of the FIU to the FIC, this will cause double reporting unless the two agencies discuss and agree on a mechanism to overcome this problem.

#### Guidelines to Financial Institutions on Reporting STR (c. 26.2):

237. The U.S. chartered banks use the U.S. government reporting forms for STRs and the newly-introduced CTRs. However, up until January 2008, only two banks had submitted STRs to the Palau FIU. Some of the U.S. chartered banks have been submitting to U.S. authorities but not to Palau—despite the clear legal requirement in the original MLPCA of 2001. Without any guidance or regulations, or standard forms issued by the FIU, all banks have not been consistently submitting reports to the FIU. It is anticipated that the newly-situated FIU will begin proper and effective implementation and enforcement of MLPCA reporting requirements by all banks.

#### Access to Information on Timely Basis by FIU (c. 26.3):

238. Section 16(d) of the MLPCA states: “The FIU shall receive the reports transmitted by the persons referred to in Sections 11 and 20. The FIU shall analyze the reports on the basis of the information at its disposal and shall gather, in particular from organizations and government ministries and agencies involved in combating organized crime, any additional information that may help to establish the origin of the funds or the nature of the suspect transactions forming the subject of the reports.”

239. Section 18 further states: “The FIU may also obtain from any public authority or from any natural or legal person information and record within the scope of investigations conducted following the report of a suspicion of illegal activities as set forth in Section 24. The FIU shall, upon request, be granted reasonable access to databases of all public authorities.”

240. Section 24 on special investigative techniques needs either probable cause or a warrant from the Supreme Court. However, this is in relation to the FIU’s law enforcement role rather than the financial intelligence gathering functions of the FIU.

241. The FIU has no standard operating procedure for analyzing the 71 STRs received to date. The FIU head has analyzed STRs based on his knowledge of known typologies and whether the transaction(s) were indeed suspicious given the circumstances and the individual(s) involved. This process could involve discussion with the two CID staff assigned to the OAG, though the potential conflict of interest noted by PALP existed, as the same investigators were necessarily involved in the primary prosecutorial functions of the OAG.

242. The practice of analyzing, storing, and disseminating STRs is as follows:

1. STR hand delivered – signed receipt by FIU staff
2. STR assessed by FIU Head
3. FIU Head decides to refer or not or to seek additional information
4. STR entered into FIU-in-a-Box Database
5. STR details disseminated by memorandum to the CID in the BPS or referred to CID staff based at the OAG.

243. The practice of STR analysis has not to date included the discipline of checking the STR database or checking in a systematic manner criminal and other intelligence databases held either at the OAG, BPS, Immigration and Customs. However, these checks have been conducted during the investigation stage by the CID. Nevertheless, it is the role of the FIU to undertake such analysis prior to deciding on whether to refer to law enforcement for further action.

244. While the STR process is inherently subjective, a more formal process would at least ensure that key criteria are checked before a decision is made, which could include a check against a list of typology indicators, other relevant lists, STR, CTR, and cross-border currency reports.

245. The lack of a standard operating procedure also makes it difficult to keep an audit trail of decisions made in relation to STR dissemination and follow-up investigations and prosecutions.

Additional Information from Reporting Parties (c. 26.4):

246. Pursuant to Section 18 of the MLPCA, the FIU may also obtain from any public authority or from any natural or legal person information and records within the scope of investigations conducted following the report of a suspicion of illegal activities as set forth in Section 24. Section 24 refers to special investigation techniques that the FIU or the OAG is empowered to use in respect of an investigation. Use of Section 24 is subject to either probable cause or in the absence thereof, a court order.

247. The FIU can inspect and obtain documentation and records of customers from reporting entities under Section 13 but subject to a court order. Section 18 also allows the FIU to obtain such records as a follow-up to investigations under Section 24 powers, but the FIU is still subject to the court order requirement under Section 13.

248. There is no Section in the MLCPA that provides for the FIU to seek additional information from reporting entities, either to clarify the information contained in the STR, or to seek additional information regarding the customer or transaction details e.g., details of other financial transactions by the same customer. Such additional information would enable the FIU to enhance its analysis of STR reports, which may or may not lead to an actual money laundering investigation.

249. During the on-site visit, the FIU advised that it had sought additional information from banks in response to STR reports submitted, but limited to some basic additional information, such as on the nationality of the individuals concerned and only on a limited number of occasions. However, both the FIU and banks advised that numerous court orders have been issued in respect of accessing records held by banks under investigation by the FIU, OAG, or CID. In fact, all banks visited indicated that they have been the subject of court orders to access banking records.

250. There has been a focus on financial investigations in response to STRs. This approach has been feasible in the past given the numbers of STRs submitted but unlikely to be the case in the future given the STR numbers expected. There is a need to enhance the FIU's core financial intelligence role, which includes obtaining additional information from reporting entities prior to any actual money laundering investigation.

Dissemination of Information (c. 26.5):

251. Section 17(b) of the MLPCA states: "The FIU may, upon suspicion of money laundering, terrorist financing, or a predicate offense, disseminate such information to domestic authorities as it deems necessary."

252. There are sections concerning information dissemination and confidentiality/secretcy requirements in both the MLPCA and FIA. While there are references in both legislations, they are not inconsistent.

253. The FIU has referred 59 cases to the CID either for follow-up investigation due to incomplete reports or for substantive investigation into possible criminal activities. However, 10 cases were directly handled by the two CID staff based at the OAG. Technically speaking, as these two staff were seconded to the OAG/FIU, there were only 49 cases disseminated out of the OAG/FIU for investigation. The practice was that until 2006, STRs were almost routinely referred to the CID, whereas since late 2006, the Attorney General decided to handle the STR analysis/investigations within the OAG by the seconded CID staff.

254. The actual copy of the STR is not disseminated. Instead, the FIU sends a memorandum to the CID with the suspicious transaction details and an explanation of the reason for the suspicion.

255. The FIU does not refer STR reports to other law enforcement agencies such as the DRT nor Customs which also have investigative powers in relation to their respective roles.

Operational Independence (c. 26.6):

256. Section 16 MLPCA establishes the FIU and gives full operational independence and autonomy to the FIU. In practice, the FIU head and staff have undertaken dual operational roles which are not uncommon in Palau. This dual role has not affected operational independence, although there have been concerns about its potential conflict, which has been addressed recently through the relocation of the FIU.

257. The MLPCA provides neither a clear nor distinct line of reporting for the FIU or its head. Reporting and budget control have followed the host agency's processes. When the FIU head was the Attorney General, both roles reported directly to the President of Palau and to the OEK. Similarly, the Attorney General controlled any OAG resources allocated to FIU operations given the absence of a separate FIU budget.

258. In respect of STR reporting, the Attorney General/FIU head decided on whether or not to refer STR reports to the CID in the BPS. He also had the prerogative, which he exercised since late 2006 in ten cases of STR investigations, to assign the analysis to the two CID investigators seconded to the OAG/FIU.

259. It is too early to comment on any potential operational independence issues with the current location of the FIU in the FIC. However, the arrangements are similar, namely, the FIU head is also the head of a government agency (i.e., the FIC Executive Commissioner), and as the agency head controls the budget and any resources allocated to FIU operations, until such time when a separate FIU budget is assigned. Furthermore, in respect of STR processing, the current FIU head has already referred, without any interference, an STR to the CID for investigation.

260. Since the establishment of the FIU, no FIU head has been removed. The former assistant attorney general who functioned as the FIU head departed at the conclusion of his four-year contract, which is the standard duration for all U.S. citizens working in government agencies in Palau. The recent change in FIU head was a decision of the President to relocate the FIU.

Protection of Information Held by FIU (c. 26.7):

261. Section 16(b) of the MLPCA clearly states: “(b) The FIU members shall be required to keep confidential any information obtained within the scope of their duties, even after cessation of those duties with the FIU. Such information may not be used for any purposes other than those provided for by this chapter.”

262. This confidentiality requirement is extended in respect of information sharing with foreign FIUs and with other government agencies in Sections 19 and 13(d), respectively, of the MLPCA. There is also an additional confidentiality requirement in Section 24 of the FIA, which applies to both the FIC Board and staff of the FIC and which carries substantial penalties for breach of confidentiality

263. The STRs and CTRs are stored in a locked filing cabinet in the FIC office on the top floor of a commercial building. The FIU-in-a-Box Database is also stored in the FIC office. Previously, these were stored in the office of the Attorney General. Only the three FIC staff has access to the database and STR files in the office. STR information referred out of the office is recorded and signed by the recipient party.

264. There have not been any cases of FIU information being stolen or used inappropriately.

Publication of Annual Reports (c. 26.8):

265. Under Section 16(f) of the MLPCA, there is a requirement for the FIU to submit an annual report to the President and the OEK. The report is meant to provide an overall analysis and evaluation of reports received and of money laundering trends.

266. The FIU published its first annual report titled “Annual Report Concerning Money Laundering Trends” and submitted it on February 11, 2008 to the President and the OEK. The report highlighted the 10 STRs received in 2007, subsequent investigation of STRs, and the filing of three cases of prosecution.

267. There has been no comprehensive analysis of the STRs received nor cases investigated to identify Palau specific money laundering typologies, nor provide sanitized cases as feedback to reporting entities.

Membership of Egmont Group (c. 26.9):

268. Palau has formally given consideration to joining Egmont Group membership. This was discussed at an MLWG meeting in 2006, but it was decided not to proceed because it was felt that Palau would not be able to meet the membership requirements.

Egmont Principles of Exchange of Information among FIUs (c. 26.10):

269. Section 19 of the MLPCA allows the FIU to enter into arrangements for exchange of financial intelligence with foreign FIUs or other law enforcement agencies based on reciprocity, provided that such arrangements are governed by confidentiality requirements.

270. Section 16 of the CTA on intelligence sharing, encourages and authorizes the FIU and other agencies to freely disclose intelligence including on money laundering and terrorist financing with other jurisdictions which are signatory to terrorism conventions or UN member, any member of the Pacific Islands Forum, and the United States under the Compact of Free Association. There are the usual confidentiality requirements attached.

271. The MLPCA requirements are in general accordance with the Egmont Group principles on information exchange. The CTA clause would enable the FIU to undertake spontaneous dissemination of financial intelligence without prior agreement with a foreign counterpart.

272. The FIU has signed MOUs for exchange of financial intelligence with Chinese Taipei, the Philippines, and Thailand. Palau has also provided information to Chinese Taipei and the United States in response to requests for information.

273. Under the Compact for Free Association with the United States, there appears already a mechanism in place for exchange of financial intelligence with the U.S., but this has not been fully explored in respect of obtaining copies of STRs filed by branches of U.S. banks in Palau to U.S. authorities (i.e., FinCEN) but not to the FIU in Palau.

Adequacy of Resources to FIU (c. 30.1):

274. The FIU has not been adequately resourced for roles specified in the MLPCA, FIA, and CTA. The FIU will face even more challenges due to under resourcing given the expected increase in CTR and STR reporting as a result of amendments to the MLPCA and FIA, the recently enacted CCDA, and the CTA.

275. Palau has never devoted any full-time resources to the FIU. Previously, the FIU staff included the Attorney General as the FIU head, an assistant attorney-general, and two CID investigators. These employees were not full time, dedicated employees of the FIU, but rather work for the FIU as well as perform their normal day-to-day duties. The FIU also relied upon the financial resources of the OAG which were never increased to pay for any FIU functions.

276. The transfer of the FIU to the FIC has compounded the problem of resources. The FIC has only three staff: the Executive Commissioner, one examiner, and one administrative staff, and a budget based on its role as a regulator and supervisor, not also as an FIU. These staff will have to work on FIU matters until additional resources, including financial, are made available. The FIC has,

however, already developed a draft new organizational structure and a proposed supplemental budget for submission to the OEK for the remainder of the current fiscal year and has indicated another substantive budget request for the following fiscal year.

277. While the integration of the prudential and AML/CFT roles at the FIC could enhance coordination on the regulatory and supervisory front, the FIU intelligence and investigatory role is not ideally suited to the current regulatory and supervisory skills of FIC staff.

Integrity of FIU Authorities (c. 30.2):

278. Section 16(b) and (c) sets out the following requirements on FIU integrity: “(b) The FIU members shall be required to keep confidential any information obtained within the scope of their duties, even after cessation of those duties with the FIU. Such information may not be used for any purposes other than those provided for by this Act; (c) The FIU members may not concurrently hold or pursue any elective office in the Palau National Government or any State Government and may not hold any other private employment.”

279. Section 24 of the FIA further states: “Members of the Commission and staff of the Commission shall execute an oath of secrecy in accordance with this Section. Upon a finding by a court of competent jurisdiction that this oath has been violated, the violator shall be dismissed from office. The violator shall be subject to a fine not exceeding \$50,000 or imprisonment for a period not exceeding ten years.”

280. There are no specific requirements for police clearance for Palau nationals to work in the OAG and FIC. There is a requirement for foreign nationals to have a police clearance. There has been no instance of former OAG-based FIU staff nor FIC staff being disciplined or dismissed for breaches of probity or confidentiality requirements.

Training for FIU Staff (c. 30.3):

281. The law enforcement mentors from the UNODC, PALP, and Anti-Money Laundering Assistance Team (AMLAT) have an ongoing program of technical assistance, which includes the FIU as part of its focus on law enforcement agencies. Australia’s AMLAT and AUSTRAC have provided the FIU with a database for CTRs, STRs, and the cross-border currency reports together with appropriate training.

282. The FIU attended two AMLAT seminars in Australia in 2006 which focused on the use of the AMLAT/AUSTRAC database, and the formation and upgrade of Pacific FIUs. Additionally, FIU staff was able to attend the APG Annual Typologies Workshop in Fiji in 2005.

283. FIU staff in the FIC are undertaking the UNODC Computer Based Training in AML/CFT.

Statistics (applying R.32 to FIU):

284. Thus far, only 71 STRs have been received which is about 10 per annum since the MLPCA was introduced in 2001. However, this is based on only two banks reporting. If all banks had reported as obligated, the STR figure could have been considerably higher and thus more statistical and



potential strategic information on money laundering patterns in Palau, not to mention more investigations and possible convictions.

285. The table below provides a breakdown of the 71 STRs:

	STRs
(a) Received	71
Disseminated to and investigated by the BPS-CID	49
Analyzed/investigated by OAG-CID staff	10
(b) Total Investigated	59
(c) Prosecutions based on STR	1

286. The single prosecution arising from an STR relates to a foreign national using a local to act as a front to run a business in Palau. The predicate charge was for breach of Palau's foreign investment law. This case is currently pending trial.

287. Approximately 100 CTRs have been received since January 2008, of which about half concerns transactions by the government of Palau; the other half is mainly from known companies that would have legitimate reasons to deposit large cash amounts. Five cross-border cash disclosures have been sent to the FIU, of which one was an STR.

Effectiveness:

288. The FIU has been inadequately resourced to undertake its functions effectively, but to its credit it has managed to achieve some key outputs. The resourcing constraint has been compounded by the transfer of the FIU to the FIC which has even less resources compared to the OAG. Correspondently, the recent amendments to the MLPCA and FIA and the recent enactment of the CCDA and CTA all have increased the demands on the FIU in terms of its intelligence functions. Furthermore, the FIC has also acquired additional AML/CFT regulatory and supervisory functions which will compete for the limited FIC resources available for FIU functions.

#### **2.5.2. Recommendations and Comments**

- Recruit an additional FIU staff member with appropriate financial analysis and/or financial investigation skills to undertake the FIU analysis functions.
- Allocate a dedicated budget to the FIU which would be under the control of the FIU head to cover operational expenses.

- Advise reporting entities formally in writing of their STR reporting obligations and provide guidance on reporting procedures.
- Consider measures to enable the FIU to obtain additional information from reporting entities during the preliminary STR analysis stage without the need for a court order.
- The FIU and OAG to determine and designate whether the FIU or the OAG should be the primary recipient of NPO threshold reports, and agree on information-sharing arrangements in respect of such reports.
- The FIU to specify and provide appropriate reporting forms and guidance to all designated reporting entities under Section 20 of the MLPCA, including U.S. chartered banks based in Palau.
- Formalize and enhance the STR analysis and dissemination process by developing written standard operating procedures.
- Consider disseminating STR reports to other relevant agencies such as the DRT and Customs, where appropriate and warranted.
- Include in the FIU Annual Report an analysis of the STR predicate crime groups, a breakdown per type of reporting entity, and if possible, an analysis of the techniques used in ML/FT in Palau.
- Make the FIU Annual Report or a sanitized version of it publicly available.
- Seek from the U.S. authorities (FinCEN) copies of all STRs filed by U.S. banks based in Palau to ensure that the FIU has access to all STRs filed by banks in Palau.

### 2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
<b>R.26</b>	<b>PC</b>	<p>No STR reporting guidance provided, nor any forms for CTR and STR reporting.</p> <p>No provisions for the FIU to seek additional information from reporting entities except by court order.</p> <p>No standard operating procedure or written procedure for STR analysis and dissemination.</p> <p>STR analysis does not include all available and relevant intelligence.</p> <p>A lack of resources undermines the effectiveness of the FIU's analysis and dissemination work.</p> <p>No publicly available FIU annual report nor statistics.</p>

## **2.6. Law enforcement, prosecution and other competent authorities—the framework for the investigation and prosecution of offenses, and for confiscation and freezing (R.27, & 28)**

### **2.6.1. Description and Analysis**

#### Legal Framework:

289. The general responsibility for law enforcement is vested in the Ministry of Justice (MOJ) in accordance with Section 105 of the Criminal Procedure Code (Title 2 PNC), which states that the MOJ shall be responsible for providing legal services to the national government and its agencies and political subdivisions, promoting and protecting the safety and peace of the public, maintaining order, enforcing all laws, and related matters. In addition, Section 4 CTA indicates that the MOJ has the primary enforcement authority for the Act, and Section 13 CTA instructs the MOJ to take measures to implement all provisions of the anti-terrorism act, including but not limited to investigating terrorism.

290. Within the MOJ, the OAG is tasked with prosecution of criminal cases, and the BPS is tasked with protection of the public and enforcing the laws, by means of Executive Order 203.

#### Designation of Authorities ML/FT Investigations (c. 27.1):

291. The CID of the BPS is responsible for investigating criminal cases including for money laundering and financing of terrorism. The CID has 18 staff, of which half is dedicated to criminal investigations and the other half to drug enforcement. Two staff members of the CID are assigned to the OAG, whereby one of them also functioned as the investigator for the FIU when it was at the OAG. One other staff has been assigned to the Office of the Independent Prosecutor that is investigating the failure of the Pacific Savings Bank.

292. The CID follows up on the STRs forwarded by the FIU, which was part of the OAG until February 2008. According to the statistics of the FIU, of the 71 STRs that were reported by the banks in the last six years, 49 have been sent to the CID for further follow-up or criminal investigation and 10 have been investigated by the CID officers seconded to the OAG. The CID indicated that it has investigated all STRs that were referred by the FIU, and that after investigation, the CID would send the cases to the Attorney General for him to decide if there is sufficient evidence for a prosecution. The CID has never initiated an investigation into ML or FT that was not related to an STR. Most of the investigated STRs relate to prostitution cases, whereby the deposits of the foreign workers were not consistent with the employment and salary indicated in the person's work permit and contract.

293. The Attorney General is responsible for the prosecution of ML and FT cases, execution of mutual legal assistance, and extradition requests. The Attorney General has prosecuted six money laundering cases, one case ended in a guilty conviction (which is on appeal), one in a not guilty verdict, one plea bargain, and three cases are currently pending trial. There is only one prosecution that originated from an STR; the predicate of this case concerned a violation of the Foreign Investment Act whereby a foreigner used a Palauan to act as a front to run a business in Palau, whereas the foreigner was actually the owner of the business. There have been no FT cases.

#### Ability to Postpone / Waive Arrest of Suspects or Seizure of Property (c. 27.2):

294. Section 25 MLPCA that is titled “undercover operations and controlled delivery” states that officials competent to investigate ML offenses who, upon prior authorization of the Supreme Court, for the sole purpose of obtaining evidence, perform acts which might be construed as elements constituting an offense referred to in the MLPCA, cannot be punished. The officer supervising the investigation has to send a sworn affidavit to the Supreme Court applying for a court order which may include allowing the officials to carry out such operations, including the delay of, freezing, or seizure of money or any other property, until the investigation has been completed. The CID has never used its powers to delay the freezing or seizure of money or other property.

295. With respect to delaying or waiving arrests, the MLPCA does not provide for any specific legislative powers; however, the CID indicated that they are not prohibited from taking these measures and that it will make a judgment call whether or not to delay arrest. In these cases, the CID would also consult with the Attorney General as to the most appropriate way to proceed.

296. Section 13(g) of the CTA gives powers to the MOJ to prevent the cross-border movement of terrorists and to track the movement of such persons, and of persons who are members of terrorist organizations. This Section could be interpreted as the police being able to postpone or waive arrests; however, since there never have been any FT investigations, the CID does not have any experience with this.

**Additional Element—Ability to Use Special Investigative Techniques (c. 27.3):**

297. Section 24 of the MLPCA allows the FIU or the OAG, in the course of an investigation to (a) monitor bank accounts; (b) access computer systems, networks, and servers; (c) place under surveillance or tap telephone lines, facsimile machines, or electronic transmission or communication facilities; (d) electronically record acts and behavior or conversations; and (e) inspect communications of notarial and private deeds or of bank, financial, and commercial records.

298. These operations shall be possible only when evidence exists which constitutes probable cause for suspecting that such accounts, telephone lines, computer systems and networks, or documents are or may be used by persons suspected of participating in ML, otherwise the FIU or OAG will need a warrant issued by the Supreme Court.

299. As mentioned above, Section 25 MLPCA allows officials competent to investigate ML offenses to perform acts which might be construed as elements constituting an offense referred to in the MLPCA, in order to obtain evidence. This would allow the BPS or the OAG to make use of controlled delivery and undercover operations for money laundering investigations.

300. The CTA does not provide for any special investigative techniques for investigations into the financing of terrorism.

**Additional Element—Use of Special Investigative Techniques for ML/FT Techniques (c. 27.4):**

301. The authorities indicated that they have not yet employed these techniques. Although the BPS and the OAG have the legal basis to use special investigative techniques, they have not done so due to a lack of resources and equipment.

302. Additional Element—Specialized Investigation Groups & Conducting Multi-National Cooperative Investigations (c. 27.5):

303. The authorities indicated that they did not have human or financial resources to establish dedicated units of financial investigators. The CID has not done any joint investigations with other countries; however, they have cooperated with other countries (mainly the United States) with respect to mutual legal assistance requests which involved freezing of bank accounts and extradition.

Additional Elements—Review of ML & FT Trends by Law Enforcement Authorities (c. 27.6):

304. Information in relation to money laundering and financing of terrorism is reviewed by the CID and there has been an ongoing (informal) effort to share any information among the relevant agencies whenever possible.

Ability to Compel Production of and Searches for Documents and Information (c. 28.1):

305. Section 13 of the MLPCA provides for the FIU and the OAG, when they have probable cause based on an investigation by the FIU, to apply to the Supreme Court for an order allowing the FIU or the OAG to examine and obtain confidential information and the identification records of a credit or financial institution. When there is probable cause, the Supreme Court will order the credit or financial institution or cash dealers, or alternative remittance systems to produce and deliver the confidential information and identification records.

306. In addition, Section 27 of the MLPCA empowers all members of Palau's law enforcement agencies responsible for the detection and suppression of money laundering offenses, to seize property connected with the offense under investigation, as well as any evidentiary items that may make it possible to identify such property.

307. The CTA does not provide the OAG or the CID with any specific powers to compel production of, or search persons or premises for transactions records, identification data, account files, business correspondence and other records held or maintained by financial institutions and other businesses or persons for investigations into the financing of terrorism.

308. The Criminal Procedure Code (Chapter 18 PNC, Section 304) allows for the police to obtain search and seizure warrants by establishing a sworn affidavit of probable cause filed with the Supreme Court. These warrants are only issued to search for and seize stolen or illegal property, forged instruments, and property, which includes documents, books, papers, and any other tangible objects, necessary to be produced as evidence or otherwise on the trial of anyone accused of a criminal offense. This would allow the CID to seize (physical) records held by financial and other institutions for evidentiary purposes.

309. The CID, through the OAG, often compels the production of banking records, though not per se for money laundering investigations. Although not explicitly listed in the law, the records requested would include transaction records, account files, business correspondence and other records.

Power to Take Witnesses' Statement (c. 28.2):

310. Although not specifically mentioned in the law, the police can take witnesses' statements. If a witness refuses to give a statement, a judge can subpoena the witness to testify if he deems so necessary.

Adequacy of Resources to Law Enforcement and Other AML/CFT Investigative or Prosecutorial Agencies (c. 30.1):

311. The OAG includes the Attorney General, four assistant attorneys general, one trial counselor, two secretary/clerks and two investigators from the CID. The Attorney General, the assistant attorneys general, and the trial counselor are all U.S. nationals.

312. The total force of the BPS consists of 170 staff (including 8 administrative) of which 18 are in the CID. The CID has seconded three staff with some expertise in financial investigations to the OAG (2) and the Office of the Independent Prosecutor (1). Customs has 35 officers, of which a majority is at field offices.

313. The OAG has many tasks and not sufficient resources to deal with all these tasks. The CID indicated that although 18 staff is sufficient for the current workload, additional staff with specific skill sets for financial investigations would be beneficial. Customs indicated that it has sufficient staff and expertise to deal with the tasks assigned to them.

314. Neither the OAG nor the CID has any specific technical resources or expertise to perform financial investigations or investigations into ML. Only recently has the CID acquired wire-tapping equipment. Customs has one K9 unit for drugs detection, but no specific technical resources to deal with cross-border cash transportations.

Integrity of Competent Authorities (c. 30.2):

315. The standard process for government hiring is based on Civil Service Regulation which gives the qualifications including selection process that applicants must go through before being selected. The CID does not have any other hiring standards than the BPS hiring procedures, which would include a background check to see if applicants have any prior convictions. All CID officers have been with the BPS for at least five years. There is no CID officer with an accounting background, usually expertise is gained by learning on the job, and from outside experts that provide technical assistance and training.

316. Section 16 MLPCA states that the FIU members shall be required to keep confidential any information obtained within the scope of their duties, even after cessation of those duties with the FIU. Such information may not be used for any purposes other than those provided for by this Act. This Section also instructs that the FIU members may not concurrently hold or pursue any elective office in the Palau National Government or any State Government and may not hold any other private employment.

317. Before selecting a candidate, Customs does a background check. Customs has a draft Code of Conduct pending approval by the MOF in April 2008. The Code of Ethics requires Customs Officers to perform their duties with high integrity.

318. All foreign nationals, including those in the OAG, have to provide a police clearance from their home country before being employed in Palau.

Training for Competent Authorities (c. 30.3):

319. Two of the attorneys of the OAG and three police officers of the CID have attended regional AML/CFT trainings over the past 3 years. In addition, the BPS tries to expose its staff to specialized training by bringing experts to Palau for training and workshops. Some Customs officers have received training at courses and workshops conducted by the U.S. government, Australian government, Pacific Islands Forum Secretariat, and Taiwan Customs Service.

Additional Element (Rec. 30) - Special Training for Judges (c. 30.4):

320. The judiciary received AML/CFT training in May 2007 in the form of a sub-regional judicial workshop on money laundering and financing of terrorism hosted by the Judiciary of Palau. The workshop was co-hosted by PALP and AMLAT. Judges from Palau, Papua New Guinea, Solomon Islands, Tuvalu, Republic of the Marshall Islands, and Fiji attended the workshop. Additionally, in December 2006 the Judiciary in Palau celebrated 25 years and a conference was held to acknowledge that fact. The conference invited speakers from the PALP and AMLAT. Presentations were made on the development of money laundering laws and how they are applied in the Pacific.

Statistics (applying R.32):

321. As mentioned above, of the 71 STRs, 49 were forwarded by the FIU to the CID. The CID indicated that it investigated all STRs and after the investigation, sent all cases back to the Attorney General for a decision whether or not to prosecute. The CID did not have any statistics on this. The Attorney General did not recall receiving these investigated STR-related cases from the CID. It is, therefore, unclear what actually happened with these STRs since according to the authorities from the six money laundering prosecutions only one originated from an STR. Although several of these cases that originated from an STR could have resulted in prosecutions for the predicate offense and not for ML, the OAG did not have any additional statistics nor an audit trail tracking the STRs.

322. Furthermore, the BPS does not keep statistics on investigations and seizures specific to the predicates offences for ML. However, according to a report from the United Nations Statistical Institute for Asia and the Pacific<sup>2</sup> on the crime situation in Palau, of the 616 felonies committed in 2004, there were 72 burglaries, 30 cases of embezzlement, fraud and forgery, and 163 grand larceny cases; of the 526 cases in 2005, there were 60 burglaries, 35 cases of embezzlement, fraud and forgery, and 165 grand larceny cases. The other cases consist mainly of assault and battery, murder, and manslaughter.

323. Customs has been keeping statistic on persons carrying large amounts of cash across the border since 1999. There have been about 90 occurrences of detections of large amount of cash up to

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<sup>2</sup> United Nations Statistical Institute for Asia and the Pacific, "Crime Situation in Palau: An Analysis of Crime Trend in Palau from 1992–2005", Project Report by Marcus M. Hangaripaii, Senior Planning Analyst, Office of Planning & Statistics, Bureau of Budget & Planning, Ministry of Finance, Republic of Palau, September 14, 2006.

the enactment of the CCDA in August 2007. Since November 2007, five declaration forms have been sent to the FIU. In addition, in 2008 there have been three attempts to transport over \$10,000 without filing a disclosure. In each case, the funds were seized and an investigation was initiated. In two of the three, a 5 percent administrative penalty was imposed. The remainder of the cash was returned upon conclusion of the investigation.

Effectiveness:

324. The CID seems to focus its investigative efforts mainly on investigating the predicate offenses and less on the money laundering. Although the CID will request bank records for most of their investigations, this seems to be done solely for evidentiary purposes for investigations into predicate offenses. The CID has not made use of any of the special powers provided to them by law.

325. The CID has sufficient powers to seize records for money laundering investigations. However, for financing of terrorism investigations and investigations into predicate offenses, the CID has to rely on the general powers of the Criminal Procedure Code to seize physical property, which would include documents, books, papers and any other tangible objects, for evidentiary purposes.

326. The OAG has only limited resources to conduct investigations into ML/FT. Those CID officers with expertise in financial investigations have been seconded to the OAG and the Independent Prosecutor. Although Palau is receiving ample technical assistance and training, there is a lack of skills to conduct ML and FT investigations.

327. The OAG and BPS do not keep comprehensive statistics on ML investigations and the amounts of property frozen or seized. Besides some basic statistics regarding the STRs, much of the statistics have to come from memory of the persons in the CID or OAG.

#### **2.6.2. Recommendations and Comments**

- The CID should focus its investigations not solely on the predicate offenses but also on the money laundering offenses which would consequently enhance expertise regarding money laundering and financial investigations.
- The law enforcement agencies should make use of the range of powers provided to them by law.
- The authorities should establish an audit trail for STRs between the FIU, BPS, and OAG to enable better insight into the effectiveness of the reporting duty.

#### **2.6.3. Compliance with Recommendations 27 & 28**

	<b>Rating</b>	<b>Summary of factors relevant to s.2.6 underlying overall rating</b>
<b>R.27</b>	<b>LC</b>	The police focuses mainly on investigating the predicate offense and less on money laundering.  The police does not make use, in the course of investigations, of all the powers provided to it by law.



<b>R.28</b>	<b>LC</b>	The legislation does not provide for powers for authorities to compel, search, seize, and obtain records during terrorist financing investigations and investigation into underlying predicate offenses.
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## **2.7. Cross Border Declaration or Disclosure (SR.IX)**

### **2.7.1. Description and Analysis**

#### Legal Framework:

328. The Cash Courier Disclosure Act of 2007 (CCDA) was signed into law by the President on August 22, 2007. The law was an amendment to Title 17, Chapter 39 of the PNC. The purpose of the CCDA is to detect the physical cross-border transportation of currency and bearer negotiable instruments, with the objective of ensuring that terrorists and other criminals cannot finance their activities or launder the proceeds of their crimes through such transportation.

329. The law provides for the declaration of currency (bank notes and coins that are in circulation as a medium of exchange) or negotiable instruments (monetary instruments in bearer form, included but not limited to, checks, travelers checks, promissory notes, and money orders that are either endorsed without restrictions, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery, such as signed instruments with the payee's name omitted) of \$10,000 or more (or its equivalent in foreign currency) that is transported into or out of Palau. Transportation refers to physical transportation by a natural person or in that person's accompanying luggage or vehicle, the shipment of currency through containerized cargo, or the mailing of currency or negotiable instruments by a natural or legal person.

330. Section 6(a) MLPCA requires that any transfer to or from a foreign country of moneys or securities involving a sum of at least \$5,000 has to be made through a licensed financial institution. This basically means that it is not allowed to bring in or out of Palau cash above \$5,000. It is not clear how this requirement relates to the \$10,000 threshold of the declaration requirement of the CCDA. The mission was informed that Customs has recommended Congress to remove Section 6(a) from the MLPCA.

#### Mechanisms to Monitor Cross-border Physical Transportation of Currency (c. IX.1):

331. Palau has a declaration system. Section 3902 of the CCDA requires that a person who attempts to, or physically transports cash or negotiable instruments in an aggregate amount of \$10,000 or more (or its equivalent in foreign currency) at one time into or out of Palau makes a written, signed declaration thereof to Customs on the form prescribed by Customs. A person is also deemed to have caused such transportation, mailing or shipping when he or she, aids, abets, counsels, commands, procures, or requests it to be done by a financial institution or any other person.

332. Persons traveling into Palau have to declare on an embarkment form whether or not they carry more than \$10,000. When there is a positive declaration, Customs will request the person to fill in a more detailed declaration form that contains, among others, information on the person and the currencies or monetary instruments that are carried.

333. Persons that are leaving Palau are also required to fill out the declaration form, but Customs currently does not have sufficient possibilities to check if this indeed is done. Customs has an arrangement with an airline company that when luggage is x-rayed and there is a suspicion of large cash amounts, the airline company will inform Customs. Both cargo luggage x-ray screeners and hand luggage inspectors have received some training in identifying bulk currency in luggage and reports any suspected bulk currency to customs officers. In addition, shortly after the on-site visit of the mission, Customs concluded an MOU with the Bureau of Immigration for immigration officers, when checking passports, to ask persons leaving the country if they carry more than \$10,000. The departure form has also been redesigned with a question for passengers if they are transporting currency or negotiable instruments worth over \$10,000.

334. Customs also has an officer stationed at the post office. This officer was predominantly stationed at the post office to check for packages that contain drugs. However, the officer is currently also performing spot-checks for packages that contain cash. Because the post office is part of the U.S. Postal Service, persons sending money out of Palau will have to declare those funds using a USPS form. The clerk of the post office collects the forms for Customs.

335. Customs has been checking for cross-border cash transportation since 1999 and has records on about 90 occurrences up to the enactment of the CCDA. Since the enactment, Customs has sent four declaration forms for amounts over \$10,000 to the FIU, and one STR.

336. The requirement to declare does not apply to banks licensed by the FIC when they have currency or negotiable instruments physically carried in or out of Palau for their own domestic use or purpose; common carriers of passengers if passengers carry currency or negotiable instruments; common carriers of goods when currency or negotiable instruments are shipped through them; and traveler checks issuers when travelers checks are delivered to selling agents.

337. Customs has an informal understanding with the larger banks that use couriers to bring cash into Palau to inform Customs that a courier will arrive and of the amount that the courier will carry. The exemption with respect to the common carriers of passengers or goods means that airline companies and couriers are not responsible to report the cross-border cash transportations of their passengers or customers.

#### Request Information on Origin and Use of Currency (c. IX.2):

338. The CCDA does not give explicit authority to request and obtain further information from the courier. However, based on their general authority as Customs, the officers always request further information from a courier found to have made no or a false declaration, and never have encountered a situation that they did not receive cooperation.

#### Restraint of Currency (c. IX.3):

339. Section 3905 of the CCDA regulates that the Customs can stop and search without a search warrant a vessel, aircraft, other conveyance, envelope or other container, or person when the officer suspects or has reasonable cause to believe that currency or negotiable instrument is being transported without the filing of a declaration or is the proceeds of a criminal activity or related to FT.

340. A Customs officer may seize the currency or negotiable instrument where there is a reasonable cause to believe that the currency or negotiable instrument is the proceeds of crime or is related to FT or when a declaration has not been made as required by the CCDA. The period of seizure is up to 14 calendar days pending investigation. For good cause shown, the OAG may apply to the Supreme Court for additional 14 days extension of this period.

341. In addition, if the OAG has reason to believe that currency or a negotiable instrument is being or has been transported without filing a declaration or when a false declaration (materially incomplete or inaccurate declaration) is filed, the OAG can apply to the Supreme Court for a search warrant of persons, places or premises, letters, parcels, packages or other physical objects, or vehicles.

342. Up to now, Customs has made no use of the powers to search vessel or aircrafts without a warrant. On three occasions, Customs seized money when no declaration was made but large amounts of cash were discovered. Upon providing information as to the origin of and use for the money and cross-checking this information, the funds were released, and in two cases an administrative penalty for not filing a declaration was issued. Because the cases were investigated and resolved within 14 days, they never had to make use of extending the seizure period.

Retention of Information of Currency and Identification Data by Authorities when appropriate (c. IX.4):

343. When a declaration above the \$10,000 threshold is made to Customs, they will send a copy of the declaration to the FIU and retain the original. The form contains information on the person and the currencies or monetary instruments that are carried.

344. In addition, in accordance with Section 3904(a), Customs has to report the facts to the Attorney General when there is a suspicion or reasonable grounds to suspect that a negotiable instrument or currency is transported in violation of the CCDA or is the proceeds of criminal activity or related to FT.

Access of Information to FIU (c. IX.5):

345. The information obtained is available to the FIU. Section 3902(a) requires that the FIU is provided with a copy of the declaration form. Section 3904(a) requires that the FIU is notified by means of an STR within 48 hours when Customs has a suspicion or reasonable grounds to suspect that a negotiable instrument or currency is transported in violation of the CCDA or is the proceeds of criminal activity or related to FT.

346. Customs has sent one STR to the FIU. This concerned a case where three travelers were trying to avoid the reporting duty by each carrying amounts between \$9,000 and \$9,500. Upon investigation, it turned out to be money from a travel agency whereby the three persons were carrying the money to pay for hotel and expenses for a group of travelers.

Domestic Cooperation between Customs, Immigration and Related Authorities (c. IX.6):

347. Section 3904(b) provides for coordination between domestic agencies. Customs and the FIU may make any information set forth in any report received pursuant to the CCDA available to another agency of the government, upon the request of the head of such department or agency made in writing

and stating the particular information desired, and the criminal, tax or regulatory purpose for which the information is sought.

348. Customs is working with the Bureau of Immigration. Immigration will often flag travelers that they suspect of carrying cash and inform the Customs officer thereof.

International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (c. IX.7):

349. Section 3904(b) provides that Customs and the FIU may make any information set forth in any report received pursuant to the CCDA available to an agency of a foreign government, upon the request of the head of such department or agency made in writing and stating the particular information desired, and the criminal, tax or regulatory purpose for which the information is sought. There have been no occasions yet where Customs has shared information.

350. Palau is a member of Oceania Customs Organization. During the annual meetings, sharing of information on money laundering schemes is one of the topics on the agenda. Palau Customs submitted information through Customs Regional Intelligence Network to other Oceania Customs Organization members on money laundering schemes, commercial fraud and other cross-border violations. This information is shared through a monthly bulletin to all member countries. The Law Enforcement Tournament between Palau, Commonwealth of the Northern Mariana Islands, and Guam Customs is a yearly tournament where the three Customs agencies meet to share information, including on cross-border issues and money laundering.

Sanctions for Making False Declarations / Disclosures (applying c. 17.1-17.4 in R.17, c. IX.8):

351. Section 3906 provides for both administrative and civil penalties for both natural persons and legal persons. The Chief of the Division of Customs can apply an administrative penalty for failure to file a declaration, or for filing a declaration containing any material omission or misstatement. The Chief may assess an administrative penalty of 5 percent of the amount of the currency or negotiable instruments transported, mailed, or shipped.

352. Corporate entities (other than the Republic of Palau) on whose behalf or for whose benefit a declaration has not been made by one of their agents or representatives can be fined in an amount equal to two times the fines specified for natural persons.

353. Two of the three occasions where funds were seized for failing to make a declaration, an administrative penalty of 5 percent was issued.

Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or FT (applying c. 17.1-17.4 in R.17, c. IX.9):

354. The Attorney General may bring a civil action in Palau against any person who willfully violates the requirements of the CCDA. Upon proof by a preponderance of the evidence that such person committed the offense, the person shall be subject to a civil penalty not to exceed twice the amount of the currency or negotiable instruments carried or attempted to be carried by the person.

355. In addition, the Attorney General would be able to prosecute for money laundering or financing of terrorism on the basis of the MLPCA, Section 3 or the CTA, Section 24.

Confiscation of Currency Related to ML/FT (applying c. 3.1-3.6 in R.3, c. IX.10):

356. Section 3905(d) allows Customs to seize funds that are transported cross-border where the officer has reasonable cause to believe that the currency or negotiable instrument is the proceeds of crime or related to terrorist financing for a period of 14 days pending further investigation. For good cause shown, the OAG may apply to the Supreme Court for additional 14 days extension of this period.

357. Sections 33 and 34 of the MLPCA provide for conviction-based confiscation of property used in a money laundering offense. Section 26 (1) CTA provides that any Palau law enforcement officer or customs official may seize and detain any property that the officer has probable cause to believe was derived from or intended for terrorism, financing of terrorism, or terrorist organizations. Section 7 of the CTA provides that any person convicted of a terrorism offense shall be required to forfeit to Palau, irrespective of any other provision of law, any property used or intended to be used in the commission of the offense, property constituting the proceeds of or property derived from the proceeds of, directly or indirectly, from the offense or any property used in any manner, wholly or partly, to commit or facilitate the commission of the offense.

Confiscation of Currency Pursuant to UNSCRs (applying c. III.1-III.10 in SR III, c. IX.11):

358. With respect to persons and entities designated pursuant to Resolution 1267, Section 26(b) CTA stipulates that property of or intended for terrorist organizations shall be frozen, seized, and detained where the organization has been designated as a terrorist organization by the UN Security Council or by the Minister of Justice or where there is probable cause to believe that the entity involved is a terrorist organization. The law does not require that funds or assets of persons or entities designated by Palau or any other jurisdiction pursuant to Resolution 1373 are to be frozen without delay and without prior notice to the designated persons involved. However, with respect to persons and entities designated pursuant to Resolution 1373, Customs could apply Section 26(a) CTA which provides that any Palau customs official may seize and detain any property that the officer has probable cause to believe was derived from or intended for terrorism, financing of terrorism, or terrorist organizations, including, without limitation to property being imported into or exported from Palau.

359. The CTA allows for conviction-based confiscation (Section 7) as well as civil forfeiture (Section 10) of terrorism-related funds.

Notification of Foreign Agency of Unusual Movement of Precious Metals and Stones (c. IX.12):

360. To date, Palau has not discovered any large or unusual cross-border movement of gold, precious metals, or precious stones. The authorities indicated that if they were to discover such an unusual cross-border movement, they would notify the customs authorities and/or the FIU of the country from which it came from, or to which the items are going to, with a view toward establishing the source, destination, and purpose of the movement of such items with the intention of taking appropriate action.

Safeguards for Proper Use of Information (c. IX.13):

361. Section 3904(c) provides that information made available by Customs or the FIU to other departments or agencies of the government of Palau or any foreign government shall be received in confidence and shall not be disclosed to any person except for official purposes relating to the investigation, proceeding, or matter in connection with which the information is sought.

Additional Element—Implementation of SR.IX Best Practices (c. IX.14):

362. Customs has, in practice, been applying several elements of the Best Practices Paper. For instance, the threshold has been set lower than the threshold indicated by the FATF; Customs is working with an airline company to obtain advance access to lists of travelers for profiling purposes; they use reverse burden of proof in the sense that they will restrain the funds and have the carrier demonstrate the legitimate origin and destination; and they have established procedures for dealing with couriers when large amounts of cash are detected.

Additional Element—Computerization of Database and Access to Competent Authorities (c. IX.15):

363. Customs officers use a detailed excel file to record information on persons arriving with large sums of cash or monetary instruments over \$10,000.

Effectiveness:

364. The CCDA gives Customs adequate powers to check for cross-border cash transportations and there is sufficient expertise within Customs to execute their powers under the CCDA in an adequate way. Although the law is recent, Customs has been using their powers effectively and within a short period of time have shown some results.

**2.7.2. Recommendations and Comments**

- The exemption for banks, common carriers of passengers or goods, and traveler checks issuers does not fall within the criteria for SR IX. Palau should reconsider the exemption of the declaration duty for certain persons/companies.
- The authorities should consider bringing the threshold mentioned in Section 6(a) MLPCA requiring that funds above \$5,000 are transmitted through financial institutions in line with the threshold of the cross-border cash declaration duty.

**2.7.3. Compliance with Special Recommendation IX**

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	LC	The exemption for banks, common carriers of passengers or goods, and traveler checks issuers does not fall within the criteria for SR IX.

### **3. PREVENTIVE MEASURES —FINANCIAL INSTITUTIONS**

#### **3.1. Risk of money laundering or terrorist financing**

365. Palau has an AML/CFT framework in place to combat money laundering and terrorist financing. For the financial sector, this framework consists primarily of the Money Laundering and Proceeds of Crime Act of 2001, as amended (MLPCA) and the Financial Institutions Act of 2001, as amended (FIA). None of these acts address the issue of developing a risk-based approach in Palau to apply the AML/CFT requirements. The FIC has supervisory responsibility over Palau's financial institutions and since February 2008 also functions as the FIU, but the FIC is significantly understaffed and lacks an appropriate budget to adequately carry out its responsibilities. In light of these shortcomings, the FIC has adopted a very informal risk approach, primarily for the prudential sector. The FIC directs its limited resources to areas of highest risk which are generally the locally-chartered banks. There is not a risk approach for AML/CFT; however, a more formal risk approach may be developed once the FIC is appropriately staffed, funded, and reorganized to take into consideration its new FIU responsibilities. The risk of ML and FT in Palau is minimal. The economy is small and most ML transactions are generally limited to illegal proceeds from prostitution and marijuana sales. There have been no known FT transactions or cases. The community is small and closely knit and virtually all individuals are a known quantity either through family or clan contacts. The foreign-owned bank branches are well regulated by their home country supervisors and any ML and FT activities that may occur would likely be confined to locally-chartered banks.

#### **3.2. Customer due diligence, including enhanced or reduced measures (R.5 to 8)**

##### **3.2.1. Description and Analysis**

###### **Legal Framework:**

366. The FIA defines "financial institutions" as banks, securities brokers, and securities dealers, while the MLPCA defines a "financial institution" or "credit institution" as any bank, savings and loan institution, credit union, securities broker or dealer, or an entity or person whose primary business activity includes: (1) acceptance of deposits and other repayable funds from the public; (2) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions; (3) financial leasing; (4) money transmission services; (5) issuing and administering means of payment (such as credit cards, travelers checks and bankers drafts); (6) guarantees and commitments; (7) trading for their own account or for account of customers in money market instruments (such as checks, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments and transferable securities; (8) underwriting share issues and participation in such issues; (9) money-brokering; (10) portfolio management and advice; (11) safekeeping and administration of securities; (12) credit references services, and (13) safe-custody services.

###### **Banks:**

367. Palau has seven banks that are licensed by the FIC to operate as banks as defined under the FIA. The FIC has the responsibility to supervise all financial institutions in Palau which are defined

by the FIA and the MLPCA. Currently there are no securities brokers or dealers licensed to operate in Palau. The seven banks consist of three locally-chartered banks and four branches of foreign banks. Three of the foreign branches are U.S.-chartered institutions that are regulated by the FDIC and other competent U.S. authorities along with the FIC. The remaining branch is chartered in Taiwan and is subject to Taiwan bank regulation and supervision along with the FIC. The four branch institutions comprise 80 percent of the banking market in Palau while the remainder is split among three locally-chartered banks. Although the latter three are incorporated in Palau, 2 of the 3 have foreign private owners. These three banks are: Asia Pacific Commercial Bank, First Fidelity Bank, Inc. and Palau Construction Bank. The four licensed foreign branches are: Bank of Guam, Bank of Hawaii, Bank Pacific, and First Commercial Bank.

368. Palau's AML/CFT legal framework covering preventive measures in financial institutions includes the MLPCA and the FIA. The MLPCA was amended in December 2007 to accommodate several enhancements and covers customer due diligence issues in addition to other preventive measures. The FIA was amended in February 2008 and has enhanced AML/CFT measures. The FIA amendments cover a variety of supervisory issues and include the reporting of suspicious transactions, compliance with AML/CFT standards, and regulatory and supervisory powers of the FIC. The FIC has not issued any regulations or guidance notes to financial institutions, under the original FIA, regarding implementation or compliance requirements; however, during the mission's on-site visit, the FIC issued several administrative and prudential regulations. AML/CFT regulations and guidance will be developed at a later date, but are not expected to be issued before the end of 2008.<sup>3</sup>

#### **Non-banks:**

369. Palau's nonbank financial sector consists of 12 insurance intermediaries (known as "insurance agents" in Palau), 12 finance companies, 14 MVTs and approximately 3 credit unions. All locally-owned businesses in Palau are required to obtain a business license from the DRT and a business license from each State that they operate in. Partly or wholly foreign-owned businesses are required to obtain a license from the FIB, in addition to the DRT and State licenses.

370. The MLPCA covers the whole nonbank financial sector, although some non-banks are covered as financial institutions and others as cash dealers, OTC exchange dealers or alternative remittance systems, and the preventive measures of the MLPCA, for some unexplained reason, do not apply to all nonbank sectors equally. This causes an uneven playing field and prevents Palau from having adequate implementation of the preventive measures. The AML/CFT legislation should apply equally across the financial sector.

#### *Insurance:*

371. Insurers and insurance intermediaries are defined as "cash dealers" or "OTC exchange dealers" under Section 4(e)(1) of the MLPCA and not as financial institutions. If they are categorized as "OTC exchange dealers," they are required to be licensed by the MOJ under Section 15 of the

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<sup>3</sup> The mission was informed that after the onsite visit, the FIC drafted elaborate regulations addressing CDD, monitoring, STRs, internal procedures and other preventive measures.



MLPCA. If they are categorized as “cash dealers,” there is no licensing or supervisory requirement under the MLPCA. Under Section 15(a) of the MLPCA, before commencing business in Palau, OTC exchange dealers, that are not licensed by the FIC as a financial institution, are required to submit a declaration of activity to the MOJ, including proof of the lawful origin of the capital required to establish the business, for the purpose of obtaining a license to establish and operate an exchange dealer business. The reason for the submission of the declaration to the MOJ is unclear, since the FIC would be the logical authority for financial institutions who engage in money brokering.

372. Insurance agents have not been licensed as OTC exchange dealers and the FIC has not conducted compliance audits of insurance agents under the MLPCA. It is unclear why insurance agents are classified as cash dealers or OTC exchange dealers since they do not deal with foreign exchange or large sums of cash. In Palau, the banks engage in foreign exchange brokering and this activity is captured as an activity of “financial institutions” and “credit institutions” under Section 4(k)(9) of the MLPCA.

373. There is no insurance legislation for supervision of insurers and insurance agents. Insurance agents provide life (group and individual), property and casualty, group health, and automobile insurance products. The life insurance products are not investment-linked. Under the FATF standard, the Palauan insurance agents need to be covered under the AML/CFT regime, since they provide life insurance products.

#### *MVTS:*

374. The MVTS have recently been brought under the purview of the FIC as per the recent amendments to the MLPCA. They are defined as “financial institutions” or “credit institutions” under Section 4(k)(4) or as “Alternative Remittance Systems (ARS)” under Section 8 of the Act. If MVTS are categorized as “ARS,” they are required to be licensed by the FIC. If they are categorized as “financial institutions” or “credit institutions,” there is no licensing requirement under the MLPCA, but the FIC may conduct compliance audits under Section 14(b) of the Act. The FIC has not yet identified the MVTS, with the exception of the three largest operators (including Western Union and Pinoy Express), but has indicated that it will categorize them as ARS. The FIC is in the process of sourcing drafting assistance for adequate regulations for the licensing of MVTS. At the time of the mission, the MVTS in Palau were unsupervised for AML/CFT measures under the MLPCA and posed a significant ML/FT risk, given the relative size of the sector.

375. The three known MVTS provide international money transfer services for the foreign worker population and are utilized by the Palauan population as well for receipt of funds from relatives abroad, for remitting funds to dependents in school abroad, or receiving medical care in the Philippines or other countries. Money transfer businesses are also increasingly being utilized for payments for the purchase of goods, such as lumber and construction materials.

#### *Credit Unions:*

376. Credit unions are covered under Section 4(k)(1) of the MLPCA as “financial institutions” or “credit institutions.” The FIA (Section 3(f)) requires the licensing of credit unions as financial institutions where the total assets are over \$500,000. The FIC has not licensed any credit unions as financial institutions under the FIA, since their total assets are below \$500,000. Most credit unions

have been incorporated as nonprofit corporations so they are tax-exempt (except for employee earnings) and do not require DRT business licenses.

*Finance Companies:*

377. Finance companies are covered under Section 4(k)(2) of the MLPCA as “financial institutions” or “credit institutions” whose primary business activity includes “lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions.” The FIC may conduct compliance audits under Section 14(b) of the MLPCA.

*Securities:*

378. There is no securities market in Palau. There are no securities dealers in Palau although they are covered under the MLPCA and the FIA as “cash dealers” or “OTC exchange dealers” and as “financial institutions.”

**Coverage of nonbank financial institutions under section 3 of this report:**

*Credit Unions, Finance Companies and Securities Brokers:*

379. In practice, credit unions and finance companies are largely unaware of the AML/CFT regime and their obligations under the AML/CFT laws. No implementation of AML/CFT supervision pursuant to the MLPCA has commenced for these sectors. No government authority has visited them to inform them of their obligations under the AML/CFT laws, and they are unsupervised for AML/CFT. There are no securities brokers operating in Palau. Due to the lack of implementation for these entities, there will be no separate analysis of their compliance with the respective FATF Recommendations and wherever financial institutions and credit institutions are mentioned in section 3 of this report, coverage of credit unions, finance companies, and securities brokers is to be inferred.

*MVTS:*

380. In practice, those MVTS that belong to international or foreign operations conduct some elements of CDD and record-keeping measures, for compliance with their group policies and procedures. They report overseas to their group AML/CFT compliance officer in the parent company. The FIC has indicated that it will categorize MVTS as ARS and not as financial institutions, but no implementation of the provisions for the business of MVTS under the MLPCA has been done. Consequently, there will be no separate analysis of their compliance with the respective FATF Recommendations, except for the ARS under SRVI.

*Insurance Agents:*

381. Since insurance agents are only covered under the categories of “cash dealers” and “OTC exchange dealers,” wherever cash dealers is mentioned in this section of the report, coverage of insurance agents is to be inferred. The MOJ has not licensed insurance agents as OTC exchange dealers, and the authorities have not indicated whether they should be treated as “cash dealers” or “OTC exchange dealers.” A section for insurance agents will be inserted under each FATF

Recommendation in section 3 of the report where provisions for OTC exchange dealers are made in the MLPCA.

Prohibition of Anonymous Accounts (c. 5.1):

382. The MLPCA addresses the issue of anonymous accounts in Section 7(h) which states that credit and financial institutions and cash dealers shall not establish any business relationship with or complete any financial transaction for any anonymous person or entity or for any person or entity using a false or fictitious name. Discussions with locally-chartered banks and foreign branches indicate that anonymous accounts are not maintained by these institutions.

When is CDD required (c. 5.2):

383. The MLPCA at Section 7(a) covers the issue of when CDD is required. Section 7(a) requires credit and financial institutions and cash dealers to verify their customers' identity and address before opening ordinary accounts or passbooks; establishing business relations; taking stocks, bonds, or other securities into safekeeping; granting safe-deposit facilities; managing assets; or effecting or receiving payments on behalf of either natural or legal persons. Section 7(g) requires credit and financial institutions and cash dealers to identify and verify their customers where the institution has doubts about the veracity or adequacy of previously obtained customer identification.

384. Occasional transactions are addressed at Section 9(a) (identification of casual customers of financial institutions). This Section requires that "casual" customers of financial institutions be identified in the manner specified in Section 7 in the case of any transaction involving a sum of at least the equivalent of \$10,000. Section 9(a) does not address situations where the transaction is carried out in a single operation or in several operations that appeared to be linked. Competent authorities indicate that the issue of linked transactions for casual customers may be addressed through the issuance of regulations at a later date.

385. Because the threshold for identifying "casual" customers is \$10,000, financial institutions are not required to identify customers that carry out occasional transactions that are wire transfer in the circumstances of SR VII, i.e., occasional wire transfers above \$1,000. In addition, there is no explicit requirement in the MLPCA to identify customers in those circumstances where there is a suspicion of ML/FT.

386. The U.S.-owned branch managers indicated that they follow home country rules that address these issues.

Identification measures and verification sources (c. 5.3):

387. Sections 7 (a), (b) and (c) of the MLPCA cover identification and verification requirements. Section 7(a) requires credit and financial institutions and cash dealers to verify their customers' identity and address before opening ordinary accounts or passbooks, establishing business relations; taking stocks, bonds, or other securities into safekeeping; granting safe-deposit facilities; managing assets; or effecting or receiving payments on behalf of either natural or legal persons. Section 7(b) requires that a natural person's identity and address be evidenced by the presentation of either an original official identification document that is unexpired and bears a photograph or a reasonable

alternative. Section 7(c) deals with legal persons and is detailed below. Locally-chartered banks generally comply with these requirements; however, some do not track expiration dates of the identification documents once they are entered into their data systems. The foreign-owned branches indicated that they follow home country requirements.

Identification of Legal Persons or Other Arrangements (c. 5.4):

388. The MLPCA Section 7(d) provides that natural or legal persons authorized to enter into transactions at credit or financial institutions on behalf of third parties shall produce know-your-customer documents as required by MLPCA Section 7(b) and (c) for themselves and the beneficial owners. Section 7(c) covers legal persons and requires the production of articles of incorporation or charter or its equivalent or any other document establishing that it has been lawfully registered and that it is actually in existence at the time of the identification, a document establishing its address and a notarized document setting forth its directors and, wherever necessary to know the true identity of the customer, its principal owners and beneficiaries. Section 7 does not specifically address the need for financial institutions to verify the provisions regulating the power to bind the legal person or arrangement.

Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2):

389. Section 10 of the MLPCA covers the identification of beneficial owners. Specifically, Section 10 requires that if, in the opinion of the credit or financial institution, it is uncertain whether a customer is acting on his or her own behalf, the credit or financial institution shall seek information by any legal and reasonable means to ascertain the true identity of the principal or party on whose behalf the customer is acting. If good faith attempts by credit and financial institutions to verify the identity of any beneficial owner and the true identity of the beneficial owner have doubtful results, the banking relationship shall be terminated, without prejudice to the credit or financial institution.

390. Section 7(c) covers legal persons and requires the production of articles of incorporation or charter or its equivalent or any other document establishing that it has been lawfully registered and that it is actually in existence at the time of the identification, a document establishing its address and a notarized document setting forth its directors and, wherever necessary to know the true identity of the customer, its principal owners and beneficiaries. Section 7 does not require financial institutions to take reasonable measures to determine who are the natural persons that ultimately own or control the customer. This includes those persons who exercise ultimate effective control over a legal person or arrangement.

391. Section 7(d) provides that natural or legal persons authorized to enter into transactions at credit or financial institutions on behalf of third parties shall produce know-your-customer documents as required by MLPCA Section 7(b) and (c) for themselves and the beneficial owners.

Information on Purpose and Nature of Business Relationship (c. 5.6):

392. The MLPCA does not require financial institutions or any other institution to obtain information on the purpose and intended nature of a business relationship. The foreign-owned branches indicate that they obtain information on the purpose and intended nature of all business relationships. Locally-chartered banks generally do not formally gather this information.

Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2):

393. There is no specific instruction in the MLPCA to require financial institutions or any other institution to conduct ongoing due diligence and to scrutinize transactions undertaken throughout the course of a business relationship to ensure that the transactions are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds. In addition, the MLPCA does not specifically require financial institutions or any other institution to ensure that documents, data or information collected under the CDD process is kept current and relevant by undertaking reviews of existing records, particularly for higher-risk categories of customers or business relationships. The foreign-owned branches report that they conduct ongoing due diligence throughout the course of a business relationship.

Risk—Enhanced Due Diligence for Higher Risk Customers (c. 5.8):

394. There is no specific instruction in the MLPCA to require financial institutions or any other institution to perform enhanced due diligence for higher-risk categories of customer, business relationship, or transaction. Discussions with some foreign branches indicate that enhanced due diligence is applied to high-risk customers as a part of their AML/CFT programs. Competent authorities indicate that they are considering requiring enhanced due diligence in the future; however, there are no immediate initiatives to address high-risk customers.

Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9):

395. Palau has not issued any regulations or guidance regarding the application of reduced or simplified CDD measures. However, the authorities have noted that some financial institutions may apply reduced CDD measures in some cases involving large private companies and some public companies. Discussions with some of the foreign branches indicated that they utilize reduced CDD measures where appropriate and approved by management.

Risk—Simplification / Reduction of CDD Measures relating to overseas residents (c. 5.10):

396. Palau has not addressed the issue of reduced CDD measures and has not issued any regulations or guidance permitting financial institutions to apply simplified or reduced CDD measures.

Risk—Simplified/Reduced CDD Measures Not to Apply when Suspensions of ML/FT or other high risk scenarios exist (c. 5.11):

397. Simplified/reduced CDD measures are not addressed by the Palau laws, including that simplified measures cannot be used whenever there is a suspicion of ML or FT or other higher-risk scenarios exist. However, the authorities indicate that some of the foreign-owned branches are utilizing reduced CDD measures.

Risk-Based Application of CDD to be Consistent with Guidelines (c. 5.12):

398. Locally-chartered banks by practice have not utilized risk-sensitive approaches to CDD. However, the larger foreign branches follow home rules and apply risk-sensitive approaches to CDD.

The FIC has not reviewed the foreign branches' risk-sensitive approaches to CDD and has not issued any guidelines to banks regarding the appropriate uses and limits on the application of CDD.

Timing of Verification of Identity—General Rule (c. 5.13):

399. The issue of the timing of verification is covered by the MLPCA at Sections 7 and 9. Section 7(a) requires credit and financial institutions and cash dealers to verify their customers' identity and address before opening ordinary accounts or passbooks, establishing business relations; taking stocks, bonds, or other securities into safekeeping; granting safe-deposit facilities; managing assets; or effecting or receiving payments on behalf of either natural or legal persons. Occasional transactions are addressed at Section 9(a) and this Section requires that "casual" customers of financial institutions be identified in the manner specified in Section 7 in the case of any transaction involving a sum of at least the equivalent of \$10,000. If the amount of the transaction is unknown at the time of the operation, the customer shall be identified as soon as the threshold amount becomes known or is reached by the transaction.

Timing of Verification of Identity—Treatment of Exceptional Circumstances (c.5.14 & 5.14.1):

400. The MLPCA does not provide for situations where financial institutions can complete the verification of the identity of the customer and beneficial owner following the establishment of the business relationship.

Failure to Complete CDD before commencing the Business Relationship (c. 5.15):

401. If a financial institution cannot complete CDD before commencing the business relationship, it cannot open the account. Section 7(a) of the MLPCA requires credit and financial institutions and cash dealers to verify the customer's identity and address before opening the account. Also Section 7(i) notes that if a prospective or existing customer is either unwilling to provide the documentation required in Section 7 or the credit or financial institution or cash dealer is unable to resolve doubts about the prospective or existing customer's identity, the credit or financial institution or cash dealer shall not open the account and shall file a suspicious transaction report. In addition, MLPCA Section 9 (identification of casual customers of financial institutions) requires that "casual customers of financial institutions shall be identified in the manner specified in Section 7 in the case of any transaction involving a sum of at least the equivalent of \$10,000. If the amount of the transaction is unknown at the time of the operation, the customer shall be identified as soon as the threshold amount becomes known or is reached by the transaction."

Failure to Complete CDD after commencing the Business Relationship (c. 5.16):

402. As noted above, Section 7(i) requires that if a prospective or existing customer is either unwilling to provide the documentation required in Section 7 or the credit or financial institution or cash dealer is unable to resolve doubts about the prospective or existing customer's identity, the credit or financial institution or cash dealer shall not open the account and shall file a suspicious transaction report. Further, as noted above, Section 7(a) of the MLPCA requires credit and financial institutions and cash dealers to verify the customer's identity and address before opening the account.

Existing Customers—CDD Requirements (c. 5.17):

403. The MLPCA does not require financial institutions to apply CDD requirements to existing customers on the basis of materiality and risk. However, Section 7(f) of the MLPCA notes that credit and financial institutions and cash dealers shall, to the extent not already done, verify their existing customer's identity and address. Financial institutions indicated that they have verified their existing customer's identity and address, including those that predate the revised MLPCA. In addition, Section 7(g) requires credit and financial institutions and cash dealers to identify and verify their customers where the institution has doubts about the veracity or adequacy of previously-obtained customer identification.

Existing Anonymous-account Customers—CDD Requirements (c. 5.18):

404. Anonymous accounts are prohibited by the MLPCA. Section 7(h) requires that credit and financial institutions and cash dealers not establish any business relationship with or complete any financial transaction for any anonymous person or entity or for any person or entity using a false or fictitious name. As noted above, Section 7(f) requires the verification of existing customer's identity and address and Section 7(g) requires the identification and verification of customers where the institution has doubts about the veracity or adequacy of previously-obtained customer identification. Financial institutions indicated that they had no anonymous accounts maintained prior to the revised MLPCA.

Foreign PEPs—Requirement to Identify (c. 6.1):

405. There are no provisions in the MLPCA or the FIA that addresses politically-exposed persons (PEPs). To meet FATF criterion 6.1, financial institutions or any other institution should be required to put in place appropriate risk-management systems to determine whether a potential customer, a customer, or the beneficial owner is a PEP.

Foreign PEPs—Risk Management (c. 6.2; 6.2.1):

406. There are no PEP requirements for financial institutions or any other institution in the MLPCA or the FIA that require institutions to obtain senior management approval for establishing business relationships with PEPs and to continue business with customers or beneficial owners found to subsequently be PEPs.

Foreign PEPs—Requirement to Determine Source of Wealth and Funds (c. 6.3):

407. There are no provisions in the MLPCA or the FIA that requires financial institutions or any other institution to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs.

Foreign PEPs—Ongoing Monitoring (c. 6.4):

408. There are no provisions in the MLPCA or the FIA that requires financial institutions or any other institution to conduct enhanced ongoing monitoring on PEP relationships.

Domestic PEPs—Requirements (Additional Element c. 6.5):

409. There are no domestic PEP requirements in the MLPCA or the FIA. The U.S.-supervised branches have PEP requirements and follow home-country rules regarding PEP accounts.

Domestic PEPs—Ratification of the Merida Convention (Additional Element c. 6.6):

410. The competent authorities could not provide the assessors with information if Palau has signed, ratified, and fully implemented the United Nations Convention Against Corruption.

Cross-Border Correspondent Accounts and Similar Relationships—introduction (Rec. 7)

411. Locally-chartered banks in Palau do not maintain cross-border correspondent banking relationships. However, the foreign branches utilize the cross-border arrangements through their head offices, but follow home-country requirements regarding AML/CFT safeguards for these relationships.

Requirement to Obtain Information on Respondent Institution (c. 7.1):

412. There are no specific provisions in the MLPCA or the FIA that require financial institutions or any other institution to gather information about a respondent institution and to determine from public information the reputation, quality of supervision and whether it has been subject to a money laundering or terrorist financing investigation or regulatory action. The U.S.-supervised branches follow home-country rules which address respondent institutions.

Assessment of AML/CFT Controls in Respondent Institution (c. 7.2):

413. Neither the MLPCA nor the FIA requires financial institutions or any other institution to assess the respondent institution's AML/CFT controls and ascertain that they are adequate and effective. The U.S.-bank branches follow home-country requirements.

Approval of Establishing Correspondent Relationships (c. 7.3):

414. There are no provisions in the MLPCA or the FIA that require financial institutions or any other institution to obtain approval from their senior management before establishing new correspondent relationships. Locally-chartered banks do not have cross-border capabilities and do not maintain correspondent accounts outside of Palau. The U.S.-regulated branches indicate that senior management approval is necessary to establish new correspondent relationships and that the correspondent relationships are arranged through their head office.

Documentation of AML/CFT Responsibilities for Each Institution (c. 7.4):

415. Neither the MLPCA nor the FIA requires financial institutions or any other institution to document their respective AML/CFT responsibilities in correspondence account relationships.

Payable-Through Accounts (c. 7.5):

416. Neither the MLPCA nor the FIA have provisions regarding due diligence requirements on payable-through accounts. Discussions with banks indicate that payable-through accounts are not currently being utilized.



Misuse of New Technology for ML/FT (c. 8.1):

417. The MLPCA and the FIA have limited provisions regarding new technologies and have not issued any guidance or regulations to financial institutions. Section 63 of the FIA addresses computer access and requires at 63(d) that banks providing computer access must maintain adequate security for their Internet platforms. Generally, locally-chartered banks in Palau have little internal capacity to address new technologies. The larger foreign-owned bank branches follow home-country requirements. There are no provisions in the MLPCA or the FIA that require financial institutions or any other institution to have policies in place or take such measures as needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

Risk of Non-Face-to-Face Business Relationships (c. 8.2 & 8.2.1):

418. The MLPCA has a provision to address non-face-to-face business transactions. Section 7(e) provides that if the transaction is not face-to-face, the credit or financial institution or cash dealer shall require a notarized identification from the customer's local bank. If, however, the local bank is located in, or a branch office of the bank is located in a Non-Cooperative Countries and Territories (NCCT) jurisdiction as that term is defined by the FATF, the non-face-to-face transaction shall not be completed. No requirement exists in the MLPCA to have financial institutions or any other institution develop and have in place policies and procedures to address specific risks associated with non-face-to-face business relationships. In addition, since there is no NCCT list, the competent authorities, in lieu of the NCCT list, are considering the issuance of a list of noncompliant jurisdictions (with FATF Recommendations) that could be issued to the supervised institutions. Discussions with banks indicate that no non-face-to-face transactions are conducted.

*Insurance Agents:*

419. Insurers and insurance intermediaries classified as "cash dealers" are not required to conduct CDD on occasional customers under Section 9 of the MLPCA, in accordance with criterion 5.2(b).

420. Rec. 5: insurers and insurance intermediaries classified as "OTC exchange dealers" whose sole occupation is that of an OTC exchange dealer and who are not otherwise licensed by the FIC as a financial institution are required to conduct CDD under Section 15(b) of the MLPCA. Under this Section, they are required to verify the identity of their customers, by requiring the presentation, prior to any transaction involving a sum greater than the equivalent of \$2,500, of an official original document of identification of the customer that is unexpired and bears a photograph, a copy of which is taken. There is no provision in the MLPCA for OTC exchange dealers regarding identification of legal persons, beneficial owners, obtaining information on the purpose and nature of the relationship, ongoing due diligence, conducting simplified or enhanced customer due diligence. However, under criterion 5.9, simplified due diligence could be conducted for life insurance policies where the annual premium is less than \$1,000 or a single premium of less than \$2,500, if Palau would include elements of risk-based CDD in its laws or regulations.

421. Rec. 6 and 8: There are no provisions regarding PEPs for compliance with Rec. 6 or for non-face-to-face transactions or new technologies for OTC exchange dealers under the MLPCA.

Effectiveness:

422. Full and proper implementation of preventive measures for financial institutions has not yet been accomplished. The foreign branches in general conduct CDD, but based on the rules in their home country. The locally-chartered banks in some cases might take a copy of the identification documents, but in general do not implement the requirements of the MLPCA. Insurance agents, finance companies and credit unions have not implemented any of the CDD requirements.

423. The FIC lacks an appropriate budget and staff to carry out its responsibilities and is in the process of developing its organization and hiring suitable staff to carry out its mandates. It has not issued any AML/CFT regulations or guidance notes and has not yet conducted any AML/CFT compliance examinations to verify compliance with requirements.

### **3.2.2. Recommendations and Comments**

- Financial and other institutions should be required to undertake CDD for customers for occasional transactions that are carried out in several operations that appear to be linked.
- Financial and other institutions should be required to undertake CDD for customers that carry out occasional transactions that are wire transfers of \$1,000 or more.
- Financial institutions should be required to undertake CDD where there is a suspicion of ML or FT.
- Financial institutions should be required to obtain information on the provisions regulating the power to bind a legal person or arrangement.
- Where customers are legal persons or arrangements, financial institutions should understand the ownership and control structure and should determine who are the natural persons that ultimately own or control the customer.
- Financial and other institutions should be required to obtain information on the purpose and intended nature of the business relationship.
- Ongoing due diligence should be required for all business relationships.
- Palau should require financial and other institutions to perform enhanced due diligence for higher-risk categories of customers.
- Financial and other institutions should be required to put into place appropriate risk-management systems to determine whether a customer is a PEP, including all the necessary measures to protect against possible misuse of account relationships.
- Financial and other institutions should be required to take measures to know its cross-border respondent institutions, assess their AML/CFT controls, have an appropriate approval process and document respective AML/CFT responsibilities including safeguards for payable-through accounts.

- Financial and other institutions should be required to have policies in place to prevent the misuse of technological development in money laundering or terrorist financing schemes.
- OTC exchange dealers should be required to conduct CDD on occasional transactions, identification of legal persons, beneficial owners, obtaining information on the purpose and nature of the relationship, ongoing due diligence.
- The classification of insurance agents as OTC exchange dealers or cash dealers should be clarified and appropriate supervision of the sector under the MLPCA should commence.
- CDD should be required for all transactions under the MLPCA for the insurance sector, but Palau may apply simplified CDD for life insurance with single premiums under \$2,500 or with annual premiums under \$1,000.

### 3.2.3. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
<b>R.5</b>	NC	<p>There is a lack of effective implementation of the CDD measures.</p> <p>Occasional transactions that appear to be linked are not addressed.</p> <p>There is a threshold gap between \$1,000 and \$10,000 for identifying occasional transactions that are wire transfers.</p> <p>There is no requirement to undertake CDD where there is a suspicion of ML or FT.</p> <p>There is no requirement to obtain information on the provisions regulating the power to bind a legal person or arrangement.</p> <p>There is no requirement to obtain the purpose and nature of business relationships or to conduct ongoing due diligence on the relationships.</p> <p>High-risk categories of customers do not require enhanced due diligence.</p> <p>Insurance agents classified as OTC exchange dealers are not required to conduct CDD for transactions under \$2,500.</p> <p>Insurance agents classified as OTC exchange dealers are not required to conduct CDD on occasional transactions, identify legal persons, beneficial owners, obtain information on the purpose and nature of the relationship, ongoing due diligence.</p>
<b>R.6</b>	NC	Neither the MLPCA nor the FIA addresses the issue of PEPs as defined by the FATF.
<b>R.7</b>	NC	The MLPCA does not address the issue of cross-border correspondent banking relationships or payable-through accounts.
<b>R.8</b>	NC	Neither the MLPCA nor the FIA require financial or other institutions to have

		<p>policies in place needed to prevent the misuse of technological developments.</p> <p>The MLPCA does not require OTC exchange dealers to have policies in place needed for non-face-to-face business or to prevent the misuse of technological developments.</p>
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### 3.3. Third Parties and Introduced Business (R.9)

#### 3.3.1. Description and Analysis

##### Legal Framework

424. There are no specific provisions in the MLPCA or the FIA that address the use of intermediaries or other third parties to perform elements of the CDD process.

##### Requirement to Immediately Obtain Certain CDD elements from Third Parties (c. 9.1):

425. There are no requirements to obtain CDD elements from third parties in the MLPCA or the FIA. However, Section 7(a) of the MLPCA requires credit and financial institutions and cash dealers to verify their customer's identity and address before opening accounts.

##### Availability of Identification Data from Third Parties (c. 9.2):

426. There are no such requirements in the MLPCA or the FIA.

##### Regulation and Supervision of Third Party (applying R. 23, 24 & 29, c. 9.3):

427. There are no such requirements in the MLPCA or the FIA.

##### Adequacy of Application of FATF Recommendations (c. 9.4):

428. Neither the MLPCA nor the FIA address this issue.

##### Ultimate Responsibility for CDD (c. 9.5):

429. There are no such requirements in the MLPCA or the FIA that address the issue of third party introducers. However, Section 7 clearly indicates that credit and financial institutions and cash dealers are required to verify customer identities before opening accounts.

##### *Insurance Agents:*

430. There are no provisions in the MLPCA regarding introduced business for OTC exchange dealers.

##### Effectiveness:

431. Locally-chartered banks do not utilize third-party introduced business. Discussions with some foreign branches that utilize introduced business indicate that they require the client's presence to

open an account relationship. U.S.-regulated foreign branches follow home-country regulatory requirements for third-party introducers.

### **3.3.2. Recommendations and Comments**

- It is recommended that Palau require financial institutions, credit institutions, cash dealers, and OTC exchange dealers that rely on third parties to perform the CDD process to take adequate steps to ensure that copies of identification data and other relevant documents will be made available from the third parties upon request.
- In addition, financial institutions should satisfy themselves that the third party is regulated and supervised appropriately.

### **3.3.3. Compliance with Recommendation 9**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
R.9	NC	Neither the MLPCA nor the FIA address the issue of introduced business.

## **3.4. Financial Institution Secrecy or Confidentiality (R.4)**

### **3.4.1. Description and Analysis**

Legal Framework:

432. Palau does not have any bank secrecy laws that would inhibit the implementation of the FATF Recommendations. Section 47 FIA states that present and past administrators, employees, and agents of a financial institution shall keep secret any nonpublic information that they obtain, unless when required by law to the FIC. In addition, Section 26 of the MLPCA (Disallowance of bank secrecy) states that banking or professional secrecy may not be invoked as grounds for refusal to provide information referred to in Section 12 (record-keeping requirements) or required in connection with an investigation which relates to money laundering and is ordered by or carried out pursuant to an order of the Supreme Court. And even though the FIU has to apply for a court order upon probable cause for the FIU to examine the contents of the information and identification records of a credit or financial institution, the authorities indicate that court orders can be obtained in a timely manner and as such does not inhibit the implementation of the FATF Recommendations, even more so since no court order is necessary for the FIU or FIC to review such records as part of the compliance audit.

Inhibition of Implementation of FATF Recommendations (c. 4.1):

433. There is no financial institution secrecy law in Palau that would inhibit the implementation of the FATF Recommendations. As also described in sections 6.1.1 and 6.5.1, information sharing between competent authorities, domestically or internationally, and between financial institutions is not prohibited by Palauan law and is undertaken when necessary. The authorities indicated not to have any problems accessing information held by financial institutions.

### 3.4.2. Recommendations and Comments

- No recommendations or comments

### 3.4.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	C	

## 3.5. Record keeping and wire transfer rules (R.10 & SR.VII)

### 3.5.1. Description and Analysis

Legal Framework:

434. The amended MLPCA at Section 12 (record keeping by credit and financial institutions), provides that credit and financial institutions shall maintain and hold at the disposal of the authorities: (a) records of customer identification for five years after the account has been closed or the relations with the customer have ended; and (b) records of transactions conducted by customers that fall under Section 5 (report on the use of cash and bearer securities), and the reports provided for in Section 11 (special monitoring of certain transactions), for five years following execution of the transaction.

435. Prior to amending the MLPCA Section 11(b) of the MLPCA required credit and financial institutions to maintain and hold at the disposal of the authorities records of transactions conducted by customers for five years following execution of the transaction. The amended version of the MLPCA at Section 12(b) now only requires the maintenance for 5 years those transactions conducted by customers that fall under Section 5 and the reports provided for in Section 11. Palau has not yet issued any implementing regulations or financial institution guidance to clarify record-keeping requirements.

Record Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1):

436. The amended MLPCA at Section 12 addresses the requirement to maintain records of customer transactions for 5 years. However, amended subsection 12(b) refers to transactions that fall under Section 5 (Report on the use of cash and bearer securities) which requires the reporting of cash transactions or bearer securities of at least \$10,000 and the maintaining of those records for 5 years. Section 12(b) also refers to reports provided for in amended Section 11 (Special monitoring of certain transactions) where financial institutions must maintain reports of suspicious and the unusual transactions that warrant special attention for five years.

437. Section 12 does not specifically require that all customer transactions be maintained for at least 5 years, only those covered in Section 5 and 11. Section 12 also does not specify the need to maintain records in a sufficient manner to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. There are no specific provisions as to the extension of such retention periods; however, competent authorities may, by court order, apply for such an extension. Discussions with financial institutions indicated that they maintain all customer transactions for at least 5 years.

Record Keeping for Identification Data (c. 10.2):

438. MLPCA Section 12(a) requires that credit and financial institutions shall maintain and hold at the disposal of the authorities records of customer identification for five years after the account has been closed or the relations with the customer have ended. Section 12(a) does not address the maintaining of account files or business correspondence. There are no specific provisions as to the extension of such retention periods; however, competent authorities may, by court order, apply for such an extension.

Availability of Records to Competent Authorities (c. 10.3):

439. MLPCA Section 12 does not specifically address the issue of timely availability. Section 12 requires that customer identification data and certain customer transactions be available to the authorities and maintained for 5 years.

440. Section 13 of the MLPCA provides for the FIU and the OAG, when they have probable cause based on an investigation by the FIU, to apply to the Supreme Court for an order allowing the FIU or the OAG to examine the general information and records referred to in Sections 7, 9, and 10 (identification records) of a credit or financial institution. When there is probable cause, the Supreme Court will order the credit or financial institution or cash dealers, or alternative remittance systems to produce and deliver the identification records. Competent authorities indicate that court orders can be obtained in a timely manner. It is noted that an inconsistency may exist in Section 13. While Section 13(a) addresses credit or financial institutions, Section 13(b) addresses credit or financial institutions, cash dealers, or alternative remittance systems. Since the authorities have only focused their attention on the banks and not on any of the other nonbank financial institutions, it is unclear to what extent this could cause future problems for the FIU.

441. There are no implementing regulations or guidance notes regarding record-keeping matters. Authorities indicate that the FIC is planning to develop AML/CFT regulations to clarify some of the requirements in the MLPCA and the FIA. However, regulations will likely not be available until sometime in 2009.

Obtain Originator Information for Wire Transfers (applying c. 5.2 & 5.3 in R.5, c.VII.1):

442. The MLPCA at Section 6 (Requirements to effect domestic or international transfers of funds via credit or financial institutions addresses wire transfer requirements) requires that (a) any transfer to or from a foreign country of moneys or securities involving a sum of at least \$5,000 or its equivalent shall be made by or through a credit or financial institution licensed under the laws of Palau and (b) all transfers are required to have and maintain through the payment chain, accurate and meaningful originator and recipient information, including but not limited to, name, address, and account number. However, although subsection 6(b) mentions “all transfers,” the authorities indicated that it only refers to the subsection 6(a), i.e., those of at least \$5,000 to and from a foreign country. Therefore, those transactions below that threshold or domestic transactions are not covered by the requirements of criterion VII.1 to keep originator information with wire transfers of \$1,000 or more. Authorities indicated that they will consider a regulation or guidance note that clarifies Section 6. Currently, Palau does not conduct domestic wire transfers between its domestic financial institutions.

443. Section 7(a) MLPCA (financial institutions and cash dealers to verify customers' identity) provides that credit and financial institutions and cash dealers shall be required to verify their customers' identity and address before opening ordinary accounts or passbooks; establishing business relations; taking stocks, bonds, or other securities into safekeeping; granting safe-deposit facilities; managing assets; or effecting or receiving payments on behalf of either natural or legal persons.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2):

444. The MLPCA at Section 6(b) states that all transfers as required by 6(a) are to have and maintain through the payment chain accurate and meaningful originator and recipient information, including but not limited to, name, address, and account number. However, transfers between \$1,000 (the FATF threshold above which originator information has to be kept with the transaction) and \$5,000 to or from a foreign country are not covered by the MLPCA.

Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3):

445. Palau does not specifically address requirements for domestic wire transfers and none are currently conducted. The MLPCA at Section 6(b) requires that all foreign transfers in 6(a) (of at least \$5,000) be required to have and maintain through the payment chain; accurate and meaningful originator and recipient information, including but not limited to, name, address, and account number. Transfers between \$1,000 and \$5,000 and domestic transfers are not required to maintain originator information.

Processing of Non-Routine Transactions (c.VII.4 & 4.1):

446. The MLPCA Section 6(b) requires that all transfers are required to have and maintain through the payment chain, accurate and meaningful originator and recipient information, including but not limited to, name, address, and account number. There are no special provisions or exceptions regarding technical limitation issues or specific record-keeping requirements. Transfers between \$1,000 and \$5,000 and domestic transfers are not required to maintain originator and recipient information.

Risk-Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5):

447. There are no provisions in the MLPCA or the FIA requiring risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. Further, Palau has not provided any guidance notes regarding wire transactions. Locally-chartered banks do not have wire transfer capabilities; however, the foreign branches have cross-border wire transfer facilities and follow home-country supervisory rules concerning those transactions.

Countries Have Measures in Place to Effectively Monitor Compliance (c. VII.6):

448. There are no measures in place to monitor the compliance of financial institutions with rules and regulations implementing SRVII. The FIC has limited staff and budget and has no AML/CFT examination program at this time. AML/CFT examinations have not yet been conducted; however, a few bank prudential on-site examinations have been conducted. Efforts are being devoted to the development of prudential regulations at this time but implementing regulations for the amended MLPCA and the FIA are not expected until sometime in early 2009.



Sanctions (applying c. 17.1-17.4 in R.17, c.VII.7):

449. Section 14(b) MLPCA allows the FIC to take remedial actions for noncompliance; however, Section 6 MLPCA is not mentioned. Section 31 MLPCA allows for civil penalties of up to \$50,000,000 for any persons failing to comply with Section 6. In addition, financial institution obligations for SRVII can be enforced by the FIC through Section 63 of the FIA. Section 63 provides for a number of enforcement tools such as written warnings, written agreements, cease and desist orders, fines, suspensions, restrictions, and revocation of licenses in case a financial institution has violated the FIA or any other law applicable to financial institutions.

Additional element: Countries may require that all incoming cross-border wire transfers contain information (c VII.8):

450. Palau requires that credit or financial institutions maintain accurate and meaningful originator and recipient information on any transfer to or from a foreign country of at least \$5,000. The MLPCA Section 6(b) provides that all transfers are required to have and maintain through the payment chain, accurate and meaningful originator and recipient information, including but not limited to, name, address, and account number. However, transfers between \$1,000 and \$5,000 are not required to maintain originator information on transfers.

Additional element: Countries may require that all outgoing cross-border wire transfers contain information (c.VII.9):

451. Palau requires that credit or financial institutions maintain accurate and meaningful originator and recipient information on any transfer to or from a foreign country of at least \$5,000. The MLPCA Section 6(b) provides that all transfers are required to have and maintain through the payment chain, accurate and meaningful originator and recipient information, including but not limited to, name, address, and account number. However, transfers below \$5,000 are not required to maintain originator information on transfers.

*Insurance Agents:*

452. Insurers and insurance intermediaries classified as “cash dealers” are not required to keep records under Section 12 of the MLPCA or any other Section that requires record keeping, so they would not meet the requirements of FATF Rec. 10.

453. Insurers and insurance intermediaries classified as “OTC exchange dealers” whose sole occupation is that of an OTC exchange dealer and who are not otherwise licensed by the FIC as a financial institution are required to keep records under Section 15(c) of the MLPCA. Under this Section, they are required to record in chronological order, all transactions, their nature and amount, indicating the customer’s complete name, and maintain such information in a register, numbers and signed by the competent administrative officer of the business, for five years after the last transaction is recorded. This requirement seems sufficient to meet the requirements of criterion 10.1.1. As indicated under the insurance agents’ section in Rec. 5, there are no provisions in the MLPCA regarding enhanced or simplified CDD. However, under criterion 5.9 simplified due diligence could be conducted for life insurance policies where the annual premium is less than \$1,000 or a single premium of less than \$2,500, Palau could include risk-based CDD in their laws and regulations.

454. There is no requirement to maintain records of the identification data obtained under Section 15(a) for transactions over \$2,500 unless the transaction is unusual or unjustifiably complex for at least five years following the termination of a business relationship, nor is there any mention of a requirement to maintain records of account files and business correspondence for five years following the termination of the business relationship pursuant to criterion 10.2.

455. OTC exchange dealers are not required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities.

Effectiveness:

456. Although institutions keep records for other purposes, there seems to be little implementation of this requirement by financial and other institutions (except to the extent that the home-country requirements of the foreign branches have requirements regarding Rec. 10 and SR VII).

### **3.5.2. Recommendations and Comments**

- It is recommended that financial institutions be required to maintain all necessary records on transactions for at least five years.
- Records should be required to be maintained in a sufficient manner to permit reconstruction of individual transactions.
- Financial institutions should be required to maintain not only identification data, but account files and business correspondence for at least five years following the termination of an account or business relationship.
- It should be clarified that financial institutions need to ensure that all customer and transaction records and information be made available on a timely basis.
- Authorities should address the discrepancy between the institutions listed in Section 13(a) and Section 13(b) MLPCA.
- The MLPCA should be amended to clarify that all wire transfers of \$1,000 or more include originator information including name, account number, and address.
- For cross-border wire transfers of \$1,000 or more, ordering financial institutions should be required to include full originator information in the message or payment form accompanying the wire transfer.
- Financial institutions should be required to include, at a minimum, the originator's account information within the message or payment form for domestic wire transfers of \$1,000 or more.
- Beneficiary financial institutions should be required to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.

- Palau should have measures in place to effectively monitor compliance of financial institutions' wire transfer rules that implement SRVII.
- The classification of insurance agents as OTC exchange dealers or cash dealers should be clarified and appropriate supervision of the sector under the MLPCA should commence.
- Include provisions under the MLPCA for OTC exchange dealers to obtain and verify CDD for transactions under \$2,500 and require OTC exchange dealers to keep records for five years after the termination of the business relationship.
- Include a provision in the MLPCA to require OTC exchange dealers to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities.

### 3.5.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
<b>R.10</b>	NC	<p>Financial institutions are not required to maintain all necessary records on transactions for at least five years.</p> <p>There is no requirement for financial institutions to maintain records sufficiently to permit reconstruction of individual transactions.</p> <p>The record-keeping requirements do not require financial institutions to maintain account files and business correspondence for at least five years.</p> <p>It should be made clear in the law that financial institutions must ensure that all customer and transaction records are available on a timely basis.</p> <p>Insurance dealers classified as “cash dealers” are not required to keep records under the MLPCA.</p> <p>Insurance dealers classified as “OTC exchange dealers” are not required to obtain CDD information for transactions under \$2,500 unless they are unusual or unjustifiably complex, keep account files and business correspondence pursuant to criterion 10.2.</p> <p>They are also not required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities.</p>
<b>SR.VII</b>	NC	<p>There are no wire transfer requirements for domestic institutions in the MLPCA</p> <p>There is a gap of coverage in the MLPCA Section 6 requirements resulting in foreign wire transfers between \$1,000 and \$5,000 not being covered by wire transfer requirements.</p> <p>There are no risk-based procedures for identifying and handling wire transfers without complete originator information.</p> <p>There are no measures to effectively monitor supervised financial institutions compliance with wire transfer rules</p>

### **3.6. Monitoring of Transactions and Relationships (R.11 & 21)**

#### **3.6.1. Description and Analysis**

##### **Legal Framework:**

457. Palau has addressed the issue of paying special attention to transactions in the MLPCA at Section 11(special monitoring of certain transactions) and at Section 12 (record keeping by credit and financial institutions).

458. The requirements for special monitoring of certain transactions in Section 11 became effective in December 2007 and no regulations or guidance notes have yet been issued in regard to transaction monitoring and the requirements of Section 12 of the MLPCA; however, these are being given consideration with the recent relocation of the FIU to the FIC.

##### **Special Attention to Complex, Unusual Large Transactions (c. 11.1):**

459. Section 11(b) of the MLPCA requires credit and financial institutions, cash dealers, and alternative remittance systems to pay special attention to all complex, unusually-large transactions, or unusual patterns of transactions, that have no apparent economic or lawful purpose, to examine as far as possible the background and purpose of such transactions, the origin and destination of the money, and the identity of the transacting parties.

##### **Examination of Complex & Unusual Transactions (c. 11.2):**

460. Section 11(b) of the MLPCA requires credit and financial institutions, cash dealers, and alternative remittance systems to pay special attention to all complex, unusually-large transactions, or unusual patterns of transactions, that have no apparent economic or lawful purpose, to examine as far as possible the background and purpose of such transactions, the origin and destination of the money, and the identity of the transacting parties. All credit and financial institutions, cash dealers, and alternative remittance systems are required to set forth their findings in writing and retain such record pursuant to Section 12 (Recordkeeping by credit and financial institutions).

##### **Record Keeping of Findings of Examination (c. 11.3):**

461. Section 11(b) of the MLPCA requires all credit and financial institutions, cash dealers, and alternative remittance systems to set forth their findings in writing, and retain such record pursuant to Section 12. Section 12 provides that credit and financial institutions, but does not mention cash dealers and alternative remittance systems, shall maintain and hold at the disposal of the authorities records of transactions conducted by customers that fall under Section 5 (Report on the use of cash and bearer securities) and the reports provided for in Section 11 (Special monitoring of certain transactions) for five years following execution of the transaction. Since Section 12 only addresses record-keeping requirements of credit and financial institutions and not cash dealers or alternative remittance systems, the MLPCA should be amended to clarify and make these requirements consistent. In addition, financial and other institutions should also keep their findings available for their auditors.

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):

462. Section 11(b) MLPCA requires that transactions that involve business relations or transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism should be given special attention by all credit and financial institutions, cash dealers, and alternative remittance systems.

463. There are no measures in place to ensure that financial institutions, cash dealers, or alternative remittance systems are advised of concerns about weaknesses in the AML/CFT systems of other countries. Competent authorities indicate that they are considering how to best assemble this information and transmit it to financial institutions.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):

464. Section 11(b) of the MLPCA requires all credit and financial institutions, cash dealers, and alternative remittance systems to set forth their findings in writing, and retain such record pursuant to Section 12. Section 12 provides that credit and financial institutions, but no mention of cash dealers, and alternative remittance systems, shall maintain and hold at the disposal of the authorities records of transactions conducted by customers that fall under Section 5 (report on the use of cash and bearer securities) and the reports provided for in Section 11 for five years following execution of the transaction.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

465. There are no specific provisions for the application of counter-measures in Palau.

*Insurance Agents:*

466. Regarding compliance with FATF Recommendation 11, insurers and insurance intermediaries classified as “OTC exchange dealers” whose sole occupation is that of an OTC exchange dealer and who are not otherwise licensed by the FIC as a financial institution are required to conduct CDD under Section 15(b) of the MLPCA. Under this Section, they are required to verify the identity of their customers in the case of any transaction conducted in conditions of unusual or unjustified complexity. They are not required to examine as far as possible the background and purpose of such transactions and to document their findings in writing, pursuant to criterion 11.2. Consequently, they would not be in compliance with criterion 11.3. Insurers and insurance intermediaries classified as “OTC exchange dealers” are not covered for compliance with FATF Recommendation 21.

Effectiveness:

467. There seems to be little, if any, implementation of this requirement by financial and other institutions, except to the extent that the home-country requirements of the foreign branches have requirements regarding Rec. 11 and 21. The locally-chartered banks are generally aware that there is a new AML law, but are not familiar with details of its requirements and have not yet implemented the

new requirements. The foreign-owned branches are aware of the new law and some have begun to implement the new requirements.

### 3.6.2. Recommendations and Comments

- Palau should issue regulations or guidance notes to financial and other institutions that clarify the requirements regarding special monitoring of certain transactions.
- Palau should develop procedures to identify and disseminate information to its financial institutions, cash dealers or alternative remittance systems, about weaknesses in the AML/CFT systems of other countries.
- Palau should be able to apply counter-measures to countries that continue not to apply or insufficiently apply FATF Recommendations and conduct transactions with Palau.
- Amend the MLPCA to make requirements consistent for credit and financial institutions and cash dealers or alternative remittance systems.
- Amend the MLPCA to require OTC exchange dealers to examine as far as possible the background and purpose of unusual or unjustified complexity and to document their findings in writing.
- Include OTC exchange dealers under Section 11 of the MLPCA (special monitoring of certain transactions).

### 3.6.3. Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
<b>R.11</b>	NC	<p>The requirements of Section 11 of the MLPCA have just recently passed and are not fully implemented.</p> <p>No regulations or guidance notes have been issued and there is no AML/CFT examination process in place. No AML/CFT examinations have been conducted to ensure compliance.</p> <p>Insurance agents classified as OTC exchange dealers are not required to examine as far as possible the background and purpose of such transactions and to document their findings in writing.</p>
<b>R.21</b>	NC	<p>Financial institutions, cash dealers, or alternative remittance systems are not provided information regarding concerns about weaknesses in the AML/CFT systems of other countries.</p> <p>Palau has no plan or procedure to apply counter-measures to those countries not following FATF Recommendations.</p> <p>No regulations or guidance notes have been issued and there is no AML/CFT examination process in place.</p>

		<p>No AML/CFT examinations have been conducted to ensure compliance.</p> <p>Insurance agents classified as OTC exchange dealers are not covered for compliance with FATF Rec. 21.</p>
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### **3.7. Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV)**

#### **3.7.1. Description and Analysis**

##### **Legal Framework**

468. Palau, as part of its AML/CFT framework, has included requirements to report suspicious transactions in Section 11 and 20 of the MLPCA and Section 49 of the FIA. The new requirements in Section 11 and 20 of the MLPCA recently became effective in December 2007 and the new requirements outlined in Section 49 of the FIA became effective in February 2008. No regulations or guidance notes have yet been issued to financial institutions in regards to these new requirements. Prior to these enhancements, the requirement to report was for transactions over \$10,000 that were conducted in a manner that appeared to have an unlawful purpose.

Requirement to Make STRs on ML and FT to FIU (c. 13.1 & IV.1):

469. Section 11(a) provides that where a credit or financial institution, cash dealer, or alternative remittance system has reasonable grounds to suspect that a transaction involves funds that are derived from, related to, or are the proceeds of a crime, the credit or financial institution, cash dealer, or alternative remittance system shall immediately provide information as to the origin and designation of the money, the purpose of the transaction, and the identity of the transacting parties to the FIU as required in Section 20 (requirement to report suspicious transactions).

470. Section 20(a) provides that credit and financial institutions, financial intermediaries, over-the-counter exchange dealers (as defined in Section 15), cash dealer, alternative remittance system, or other natural or legal person subject to Sections 5-11, shall be required to report to the FIU transactions referred to in Section 11 (special monitoring of certain transactions).

471. Section 20 also states that the persons referred to in this Section shall be required to report the transactions carried out even if it was not feasible to defer their execution or if it became clear only after completion of a transaction that it involved a money laundering offense or terrorist financing. Any natural or legal person referred to in this subsection shall also be required to report without delay any information that might confirm or invalidate the suspicion of a violation of Section 3 (criminalization of money laundering).

472. Section 11(a) refers to the reporting of suspicious transactions involving funds that are derived from, related to, or are the proceeds of a crime. Section 4 of the MLPCA defines proceeds of crime as any property or economic advantage derived directly or indirectly from a crime, and crime includes any act committed in Palau that is a felony. Pursuant to Section 101 of Palau's Criminal Code, a felony is a crime that is punishable by imprisonment for a period of more than one year. However, with respect to the predicate crimes for money laundering, only 12 of the 20 predicates that are required under the FATF standard are covered by Palau's laws.

473. Section 49 of the FIA establishes a reporting duty for suspicious transactions for financial institutions that conflicts with the suspicious transactions reporting duty of Section 11 of the MLPCA. Section 11 of the MLPCA requires credit or financial institution, cash dealer, or alternative remittance system to immediately provide information on STRs to the FIU, whereas Section 49 of the FIA states that financial institutions (in the FIA only banks and securities dealers) shall not carry out a transaction that appears to have an unlawful purpose or when it suspects it to be related to a serious criminal activity until it reports the transaction to the FIC and the FIU. The MLPCA requires prompt reporting only but the effect of the FIA is that financial institutions cannot proceed with a transaction unless they first report the transaction. Since the sections in these laws are new, the banks have not had any experience with dealing with these conflicting requirements.

STRs Related to Terrorism and its Financing (c. 13.2):

474. Section 20 of the MLPCA defers to Section 11 regarding identifying those transactions that must be reported. Section 11 describes reportable transactions as a transaction involving funds that are derived from, related to, or are the proceeds of a crime. The financing of terrorism, as criminalized in Section 24 CTA with imprisonment of 10 years up to life, is a crime and, therefore, transactions that involve funds that are derived from, related to, or are the proceeds of terrorist financing should be reported. However, this only would comprise funds that are the proceeds of terrorist financing. Under the MLPCA, there is no adequate requirement to report funds (licit and illicit) that are suspected to be linked or related to, or to be used for terrorism, terrorist acts, by terrorist organizations, or those who finance terrorism.

475. While the reporting duty of Section 49 FIA is broader than the MLPCA, the coverage of institutions is more limited than the MLPCA. Financial institutions (as defined in the FIA) must report transactions that appear to have an unlawful purpose or when there is a suspicion that it is related to a serious criminal activity. This would include funds that are suspected to be linked or related to, or to be used for terrorism, terrorist acts, by terrorist organizations, or those who finance terrorism.

No Reporting Threshold for STRs (c. 13.3):

476. Sections 11 and 20 MLPCA require the reporting of suspicious transactions without a threshold; however, there are no specific requirements to report attempted transactions.

Making of ML and FT STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):

477. Sections 11 and 20 require reporting without exception to tax matters.

Additional Element - Reporting of All Criminal Acts (c. 13.5):

478. The MLPCA requires that when a financial institution suspects that funds are derived from, related to, or are the proceeds of a crime, that a report to the FIU must be made. Because the Criminal Code, Section 101, defines crimes as felonies that are punishable by imprisonment for a period of more than one year, not all criminal acts are included in the suspicious transaction reporting duty.

Protection for Making STRs (c. 14.1):



479. Section 22 of the MLPCA (exemption from liability for bona fide reporting of suspicions) states that: “(a) no cause of action, suit, or other judicial proceeding for breach of banking or professional secrecy may be instituted against a person who in good faith has carried out a transaction which later is determined to be a suspect transaction or money laundering offense or has transmitted information or submitted a report; (b) no civil or criminal action may be brought, nor any professional sanction taken, against any person who, in good faith, transmits information or submits reports, even if the investigation or judicial decision do not give rise to a charge for any offense; (c) no civil or criminal action may be brought against any person by reason of any material or nonmaterial loss or economic or noneconomic damage of any kind resulting from the freezing of a transaction or the reporting of suspicious transactions or possible violations or other wrongdoing as contemplated by this Act.”

480. Section 23 of the MLPCA (exemption from liability arising out of the execution of transactions) states that: “(a) in cases where a suspect transaction has been carried out and unless the Supreme Court has determined that there is probable cause to believe there was a conspiracy with the perpetrator or perpetrators of the money laundering offense, no criminal proceedings in respect of money laundering may be brought against any person who, in connection with his, her, or its trade or occupation, carried out or gave advice regarding the suspect transaction; (b) the foregoing exemption of liability shall only apply if a person subject to the MLPCA carries out any transaction at the request of the FIU or the OAG.”

481. Section 49(c) of the FIA provides that when a financial institution provides information that is provided to or requested by the FIU or FIC in good faith, the financial institution shall be exempted from liability of any kind for complying with the section and/or for breach of any restriction on disclosure of information, regardless of the result of the communication. Financial institution in Section 49 includes the administrators, employees, and shareholders of a financial institution.

#### Prohibition Against Tipping-Off (c. 14.2):

482. The FIA at Section 49(b) states that with regard to any information provided to or requested by the FIU or the FIC for the purposes of complying with the MLPCA or any money laundering or financing of terrorism law of Palau, or information disclosed in relation to a suspicious transaction, a financial institution shall not disclose to any person, other than a court or other person authorized by law, that information has been transmitted to or requested by the FIC, the FIU or other authorities, that an investigation is being carried out, or that instructions not to execute a transaction are being carried out. Financial institution, in Section 49, includes the administrators, employees, and shareholders of a financial institution.

483. The MLPCA does not give a clear prohibition for tipping off; however, Section 32(a)(1) allows for a penalty of not more than two years’ imprisonment or a fine not to exceed \$10,000 for persons and directors or employees of organizations that carry out or advise on financial operations who knowingly disclose to the owner of the sums or to the principal of the transactions, a report which they are required to make or the action taken on it as specified in Sections 11, 13, 20, and 25 of the Act.

484. Section 21 MLPCA provides for the FIU or the Attorney General to request to the Supreme Court, upon probable cause, an order to stop the execution of a transaction. The stop notice order

defers the execution of the transaction for a period not to exceed 72 hours. If the Attorney General or the FIU want to extend the stoppage of the transaction, Section 21(c) prescribes that “all parties to the transaction” must be notified. It is not clear from the text of the law if “all parties” include the ordering party and beneficiary of the transaction or only the reporting entity. If this notification includes the ordering party and beneficiary, it could constitute tipping off by the authorities.

Additional Element—Confidentiality of Reporting Staff (c. 14.3):

485. No law or regulation ensures that the names and personal details of staff of financial institutions that make STRs are kept confidential by the FIU.

Consideration of Reporting of Currency Transactions Above a Threshold (c. 19.1):

486. Section 5 of the MLPCA requires credit and financial institutions to keep regular reports of all transactions made in cash or bearer securities of at least \$10,000, or its equivalent in foreign cash or bearer securities, and for such reports to have accurate and meaningful originator and recipient information including, but not limited to, name, address and account number. The \$10,000 threshold may be met either through a single transaction or a series of contemporaneous transactions that in the aggregate are at least \$10,000. Credit and financial institutions are required to provide within 15 days from the date of the transaction, or as otherwise provided by regulation by the FIC, all such reports to the FIU and FIC offices in the form and manner as set forth by the FIU or the FIC. The FIC has not issued any regulations or guidance notes for the reporting of large cash transactions. This reporting requirement became effective in December 2007 and around 100 CTR reports have been received since January 2008.

Additional Element—Computerized Database for Currency Transactions Above a Threshold and Access by Competent Authorities (c. 19.2):

487. The FIC has a CTR database for recording and storage of CTRs.

Additional Element—Proper Use of Reports of Currency Transactions Above a Threshold (c. 19.3):

488. Information in the CTR database is limited to the FIC.

Guidelines for Financial Institutions with respect to STR and other reporting (c. 25.1):

489. The FIC has recently assumed FIU responsibilities and has not yet established or issued any guidelines nor any STR or CTR forms to financial or other institutions to assist them in implementing and complying with AML/CFT requirements.

Feedback to Financial Institutions with respect to STR and other reporting (c. 25.2):

490. The MLPCA Section 16(e) provides that the FIU shall confirm in writing receipt of any reports and of money laundering trends. No feedback has been provided to any of the banks that have filed STRs over the past year. The FIC has recently assumed FIU responsibilities and indicates that they are beginning to provide feedback on reported STRs.

*Insurance Agents:*

491. Rec. 13: Insurers and insurance intermediaries classified as “OTC exchange dealers” are required to obtain customer identification for unusual or unjustifiably complex transactions under Section 15(b) of the MLPCA and to report suspicious transactions to the FIU under Section 20 of the MLPCA. As indicated above, Section 20 addresses the issue of reporting suspicious transactions without a threshold, or exception to tax matters. However, there are no specific requirements to report attempted transactions in accordance with the requirements of criterion 13.3. There is no sufficient requirement to file STRs with the FIU where there is a suspicion of FT pursuant to criterion 13.2. No insurance agent has filed any STR with the FIU and they are largely unaware of ML/FT risks in the insurance sector and of their obligations under the MLPCA.

492. Rec. 14: OTC exchange dealers and their directors, officers and employees are legally protected under Section 22 of the MLPCA when they report suspicious transactions to the FIU in good faith and the same argument under criterion 14.1 above applies. Regarding criterion 14.2, OTC exchange dealers are not subject to the provisions of the FIA any other provisions for the prohibition of tipping-off under the MLPCA, except that there is a penalty under 32(a)(1) for not more than two years’ imprisonment or a fine not to exceed \$10,000 for persons and directors or employees of organizations that carry out or advise on operations who knowingly disclose, to the owner of the sums or to the principal of the transactions specified in that section, a report which they are required to make or the action taken on it as specified in Section 20 of the Act.

493. Rec. 19: Insurers and insurance intermediaries classified as OTC exchange dealers are not required to file CTRs with the FIU.

494. Rec. 25: No guidance has been issued by the FIC or the MOJ to insurance agents. No STRs have been filed by insurance agents to date.

Effectiveness:

495. Only two of the seven banks have reported the 71 STRs to the Palau FIU in the past. There has been little outreach or guidance for the financial or other institutions provided by the FIC or FIU to guide these institutions in implementing the reporting duty.

### **3.7.2. Recommendations and Comments**

- Palau should ensure that there is a clear reporting duty in the MLPCA for all reporting entities to report transactions that are suspected to be linked or related to, or to be used for terrorism, terrorist acts, by terrorist organizations, or those who finance terrorism.
- The reporting of suspicious transactions should include the reporting of attempted transactions.
- Although there is a penalty in the MLPCA that can be used to sanction tipping-off, the MLPCA should provide for a clear prohibition for tipping off.
- Palau needs to clarify and ensure that Section 21 MLPCA does not inadvertently cause a transaction to be tipped off. Currently, Section 21(c) prescribes if the Attorney General or the FIU want to extend the stoppage of a transaction, Section 21(c) prescribes that “all parties to

the transaction” must be notified. It is not clear from the text of the law if “all parties” include the ordering party and beneficiary of the transaction or only the reporting entity.

- It is recommended that Palau issue as soon as possible guidelines as well as forms to report STRs and CTRs to assist financial institutions and DNFBPs to implement and comply with their respective AML/CFT requirements.
- The competent authorities, including the FIU and the FIC, should provide financial institutions and DNFBPs that are required to report suspicious transactions with adequate and appropriate feedback.
- The classification of insurance agents as OTC exchange dealers or cash dealers should be clarified and appropriate supervision of the sector under the MLPCA should commence.
- Include a requirement for OTC exchange dealers to file STRs on attempted transactions and suspicions of FT in the MLPCA.
- Several issues, such as the reporting duty and tipping off, are addressed in different sections in the law or in different laws. It would be advisable to consolidate these duplicative issues in one new AML/CFT law.

### 3.7.3. Compliance with Recommendations 13, 14, 19, and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
<b>R.13</b>	PC	<p>The deficiencies in the list of predicate offences impact the scope of the requirements to report STRs.</p> <p>The reporting of suspicious transactions related to terrorism is not sufficiently covered in the MLPCA.</p> <p>There is no requirement to report attempted transactions.</p> <p>There is no adequate implementation of the reporting duty by financial and other institutions.</p> <p>Insurance agents classified as “OTC exchange dealers” are not required to report attempted transactions or to file STRs where there is a suspicion of FT.</p>
<b>R.14</b>	LC	<p>Section 21 of the MLPCA could constitute tipping off by the authorities.</p> <p>There no explicit tipping-off prohibition in the MLPCA.</p>
<b>R.19</b>	C	
<b>R.25</b>	NC	<p>Palau has not provided its financial institutions or DNFBPs with guidelines or STR/CTR forms to assist them in implementing and complying with their respective AML/CFT requirements.</p> <p>The competent authorities have not provided feedback to financial institutions or</p>

		DNFBPs regarding the reporting of suspicious transactions. No guidance has been issued to OTC exchange dealers.
<b>SR.IV</b>	PC	The reporting of suspicious transactions related to terrorism is not sufficiently covered in the MLPCA.

### **3.8. Internal Controls, Compliance, Audit and Foreign Branches (R.15 & 22)**

#### **3.8.1. Description and Analysis**

##### Legal Framework:

496. Palau as part of its AML/CFT framework has included the need for internal policies and controls in financial institutions. The MLPCA at Section 14 (internal anti-money laundering programs at credit and financial institutions and compliance requirements) provides for written policies, internal audit arrangements, designation of compliance officers, training and the centralization of information. Section 14(a) requires that credit and financial institutions shall develop written policies and procedures, to the extent such programs and procedures do not currently exist, for the prevention of money laundering. Such programs shall include the following: (1) Centralization of information on the identity of customers, principals, beneficiaries, authorized agents, and beneficial owners, and regarding suspicious transactions; (2) Designation of compliance officers, at central management level, in each branch and at each agency or local office; (3) Ongoing training for officials or employees; (4) Internal audit arrangements to check compliance with and effectiveness of the measures taken to implement this Act. Palau has not issued any regulations or guidance notes regarding Section 14.

497. Chapter VI of the FIA provides requirements concerning accounts and financial statements, audit, duties of auditors, publication and disclosure, reports and examination, and production of records and information for examiners and auditors. The FIA requirements address the maintenance of adequate financial statements, the production of annual audited statements. Specifically Section 59 requires, among other requirements, that auditors or certified public accountants report to the FIC any serious breaches or noncompliance with the FIA or any regulations or guidelines issued by the FIC.

##### Establish and Maintain Internal Controls to Prevent ML and FT (c. 15.1, 15.1.1 & 15.1.2):

498. The MLPCA Section 14(a) requires credit and financial institutions to develop written policies and procedures for the prevention of money laundering. Such programs shall include the following: (1) Centralization of information on the identity of customers, principles, beneficiaries, authorized agents, and beneficial owners, and regarding suspicious transactions; (2) Designation of compliance officers, at central management level, in each branch and at each agency or local office; (3) Ongoing training for officials or employees, and (4) Internal audit arrangements to check compliance with and effectiveness of the measures taken to implement this Act. Section 14(a) does not address the issue of timely access to CDD and transaction records by the compliance officer and other appropriate staff. Palau should clarify in Section 14(a)(1) that the focus is not solely on centralization of information, but on record retention, the detection of unusual and suspicious

transactions, and the reporting obligations. The issue of record retention should be specifically included in Section 14(a)(1).

499. The U.S.- and Taiwan-owned bank branches have detailed AML/CFT written policies and communicate requirements to staff on a regular basis. The locally-chartered banks are small and generally do not maintain detailed written policies and procedures for the prevention of money laundering.

500. The foreign branches each maintain an AML/CFT compliance officer at the management level. These compliance officers are posted at their main offices in Guam or Honolulu for the U.S. banks. None of the foreign branches has formally identified any staff as an AML/CFT compliance officer, but in practice each branch manager functions as a compliance officer. The locally-chartered banks have not formally identified a compliance officer and have very limited staff consisting of 3–4 individuals. Branch managers assume compliance responsibilities; they have timely access to customer identification data and other CDD information such as transaction records and other relevant information.

#### Independent Audit of Internal Controls to Prevent ML and FT (c. 15.2):

501. Section 14(a) also covers the audit function and requires internal audit arrangements to check compliance with and the effectiveness of the measures taken to implement the MLPCA. Section 14(a) does not address the issue of the need for providing the audit function with independence, adequate resources, and to test compliance. The four foreign branches have an independent internal audit function housed in each of their head offices. Internal audits are randomly conducted. Locally-chartered banks generally do not have an independent audit function in the bank. Audit functions are the responsibility of the branch manager or other employees.

#### Ongoing Employee Training on AML/CFT Matters (c. 15.3):

502. Training issues are contained in Section 14(a) and require that credit and financial institutions develop ongoing training for officials or employees. This Section does not specifically require that the training program should include information on current money laundering and financing of terrorism techniques, new developments, methods and trends; and a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting.

503. The foreign branches provide ongoing training on AML/CFT techniques, obligations, methods, and trends. Most have training programs on site delivered by main office compliance personnel. In addition, on-line training and in some cases testing is required. The FIC has offered training to some banks using the UNODC interactive training program. Local banks provide training on basic account opening, suspicious transaction reporting, and record-keeping requirements.

#### Employee Screening Procedures (c. 15.4):

504. There are no laws or regulations that require employee screening. The foreign branches screen all hires. Generally, credit and police checks are conducted on prospective employees. In addition, U.S. branches will submit new hires to an FBI check. Locally-chartered banks indicate that

they generally have screening procedures for the hiring of bank employees including credit and police checks. Some locally-chartered banks hire employees based upon personal knowledge of the applicant and do not conduct any formal screening.

**Additional Element—Independence of Compliance Officer (c. 15.5):**

505. The small local banks generally do not have the capacity and staff to have an independent compliance function. Usually, branch managers perform this function as part of their responsibilities and report to the board of directors. The larger foreign branches maintain an independent compliance function, generally reporting to the board of directors.

**Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2):**

506. Currently, there are no Palau licensed banks approved to have foreign branches or subsidiaries. Competent authorities indicated that they do not expect to approve any foreign branches at this time. FIC Regulation 12-2003 sets out the application requirements for bank offices and requires the express written approval of the FIC through its Executive Commissioner. There are no provisions in the FIA or MLPCA that require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home-country requirements and the FATF Recommendations, to the extent that local (i.e., host country) laws and regulations permit.

507. FIA 53(c) states that if there is a conflict between the provisions of the FIA and the national laws and regulations of Palauan branches of a foreign bank's home jurisdiction, the conflicting national laws and regulations of the foreign bank's home jurisdiction shall prevail. While this position is inconsistent with criterion 22.1.2, at the moment this should not be a problem, since most of the foreign bank branches in Palau are U.S. regulated.

**Requirement to Inform Home Country Supervisor if Foreign Branches & Subsidiaries are Unable Implement AML/CFT Measures (c. 22.2):**

508. There are no provisions in the FIA or the MLPCA that require financial institutions to inform their home-country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e., host country) laws, regulations, or other measures.

**Additional Element—Consistency of CDD Measures at Group Level (c. 22.3):**

509. There are no requirements for financial institutions subject to the Core Principles to apply consistent CDD measures at the group level, taking into account the activity of the customer with the various branches and majority owned-subsiidiaries.

*Insurance Agents:*

510. Rec. 15: Insurance agents either classified as "cash dealers" or as "OTC exchange dealers" are not required to develop compliance programs for AML/CFT under Section 14 of the MLPCA or any other Section of the Act. In practice, the compliance programs of insurance agents do not include an AML/CFT component. They are, therefore, not compliant with the requirements of FATF Rec. 15.

511. Rec. 22: Insurance agents in Palau are either branches of Guam or Philippine insurance companies or have agency relationships with several insurers to sell their products for commissions. Rec. 22 is, therefore, not applicable.

### 3.8.2. Recommendations and Comments

- Palau should consider enhancing the MLPCA Section 14 AML/CFT policy requirements to include the need for timely access to customer identification data by the compliance officer or other appropriate staff.
- Palau should clarify in Section 14(a)(1) MLPCA that the focus is not solely on centralization of information, but on record retention, the detection of unusual and suspicious transactions, and the reporting obligations.
- Section 14(c) MLPCA should be enhanced to specifically include information on current money laundering and financing of terrorism techniques, new developments, methods and trends; and a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting.
- The MLPCA should be amended to ensure that insurance agents either classified as “cash dealers” or as “OTC exchange dealers” are required to develop compliance programs for AML/CFT.
- It is recommended that financial and other institutions be required to put in place screening procedures to ensure high standards when hiring employees.
- While Palau has a moratorium on licensing new banks and foreign branches, it is recommended that the MLPCA be enhanced to ensure that, if future foreign branches and subsidiaries are approved, that they observe AML/CFT measures consistent with home-country requirements and FATF Recommendations to the extent that local laws and regulations permit.

### 3.8.3. Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	PC	<p>The MLPCA does not include the need for timely access to customer identification data.</p> <p>Training requirements do not include the need for training on current money laundering and financing of terrorism techniques, new developments, methods, and trends.</p> <p>There are no financial institution requirements for employee screening.</p> <p>Cash dealers and OTC exchange dealers are not required to develop compliance programs for AMLCFT under Section 14 of the MLPCA or any other section of the Act.</p>



<b>R.22</b>	NC	There are no requirements in the MLPCA or the FIA that require financial institutions to ensure that their foreign branches observe AML/CFT measures consistent with home-country requirements and FATF recommendations as required by Recommendation 22.
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### **3.9. Shell Banks (R.18)**

#### **3.9.1. Description and Analysis**

##### Legal Framework:

512. Palau does not approve the establishment of shell banks; however, there are no specific prohibitions regarding shell banks in the FIA. When the FIA came into force in June 2001, existing financial institutions were grandfathered to engage in financial activities (Section 30a FIA). New banks are required to be licensed by the FIC pursuant to the banking act and Palau in the past has moved to dissolve corporations that used the word “bank” but were unlicensed by the FIC.

513. The FIA at Section 3 (prohibitions and exemptions) states that no person shall engage in the business of a bank, securities broker, or securities dealer without an effective license issued by the FIC, whereby “bank” is defined as a person engaged in the business of accepting deposits in Palau from residents and nonresidents. Section 3 does not specifically address shell banks.

##### Prohibition of Establishment Shell Banks (c. 18.1):

514. Palau does not approve the establishment nor accept the continued operation of shell banks. There are no specific prohibitions regarding the establishment of shell banks either in law or regulation. The licensing requirements of Section 32 FIA do not specifically require that there is a meaningful mind and management present in Palau, although Section 39 FIA states that a bank organized in Palau must have a manager in Palau who has authority to engage the financial responsibility of the bank.

##### Prohibition of Correspondent Banking with Shell Banks (c. 18.2):

515. There are no laws, regulations or guidance notes in Palau that prohibit financial institutions from entering into correspondent banking relationship with shell banks. However, discussions with foreign-branch banks licensed in Palau indicate that their home office does not allow correspondent banking relationships with shell banks. Locally-chartered banks do not have cross-border correspondent relationships.

##### Requirement to Satisfy Respondent Financial Institutions Prohibit the Use of Accounts by Shell Banks (c. 18.3):

516. There are no laws, regulations, or guidance notes that require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. Locally-chartered financial institutions do not have cross-border correspondent facilities. Foreign branches licensed in Palau are regulated by their home country supervisors in the United States and Taiwan and correspondent accounts are closely monitored.

### 3.9.2. Recommendations and Comments

- Palau should enhance the MLPCA to prohibit financial institutions from entering into correspondent banking relationships with shell banks.
- Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
- Palau should consider an enhancement to the MLPCA to prohibit the establishment of shell banks.

### 3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	PC	<p>There is no requirement for banks to have a meaningful mind and management in Palau nor an explicit prohibition against shell banks.</p> <p>Palau does not prohibit financial institutions from entering into correspondent banking relationships with shell banks.</p> <p>Financial institutions are not required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.</p>

## 3.10. The Supervisory and Oversight System—Competent Authorities and SROs. Role, Functions, Duties, and Powers (Including Sanctions) (R. 17, 23, 25 & 29)

### 3.10.1. Description and Analysis

#### Legal Framework:

517. The FIC is headed by an Executive Commissioner and staffed with one examiner in training and one support person. Examination responsibilities include all financial institutions which covers banks, securities brokers, and securities dealers as defined by the FIA. Financial institutions as defined by the MLPCA is broader and is described above. The FIC has also been recently given FIU responsibilities when it was transferred from the OAG.

#### Regulation and Supervision of Financial Institutions (c. 23.1):

518. The financial institutions sector is supervised by the FIC. Section 49 of the FIA requires that the FIC shall regularly examine all financial institutions (which by the FIA is limited to banks and securities brokers and dealers according to the definitions in Section 2(n) FIA), AML/CFT procedures, and reporting standards. Such examinations may, in the sole discretion of the FIC, be conducted as an on-site or off-site examination or both. In addition, Section 14(b) of the MLPCA requires the FIC to conduct random compliance audits in credit and financial institutions to assess compliance with the MLPCA. Both the MLPCA and the FIA have recently been amended to enhance AML/CFT coverage and supervision issues. However, the FIC does not currently have the capacity to

assure the effective implementation of an effective AML/CFT supervisory program due to a lack of expertise, human resources, and an adequate budget. The FIC has not yet conducted any AML/CFT examinations to ensure the effective implementation of requirements and FATF Recommendations.

Designation of Competent Authority (c. 23.2):

519. The FIC has recently been given the responsibility to inspect financial institutions to ensure compliance with AML/CFT requirements. As noted above, Section 49 of the FIA provides supervisory powers to the FIC. In addition, Section 14(b) of the MLPCA requires the FIC to conduct random compliance audits to assess compliance with the MLPCA. Finally, Section 61(b) also provides for the FIC to audit whether financial institutions observe other applicable laws.

Fit-and-Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1):

520. The FIC is responsible to license and conduct fit-and-proper tests for bank applicants. When the FIA came into force in June 2001, existing financial institutions were grandfathered regarding certain licensing requirements; however, financial institutions were required to deliver to the FIC several documents including: corporate charter, certificate of good standing, foreign investment approval, and the business license (Section 30a FIA). Further, Section 44 of the FIA requires that all persons elected or appointed as administrators of a financial institution must be of good repute and must meet the criteria established by regulation of the Commission regarding qualifications, experiences and integrity. Administrator is defined in the FIA to mean any person who is an officer of a financial institution, including any member of the board of directors or the audit committee, or the head of a department of the organization, but this only applies to a person who is regularly employed at the Palau office of the financial institution. Section 40 of the amended FIA (Restrictions on ownership and holdings) requires approval from the FIC of any changes in ownership of over 20 percent or a change in controlling interest.

521. The FIC has recently issued new prudential regulations which include a new regulation that addresses a “fit and proper test” for the licensing process. Some of the new fit and proper criteria for bank administrators, directors, or significant shareholders includes the following topics: competency, removal or suspension, offenses or breaches, censures, convictions, fraud, bankruptcy, political office, and judgments. Currently there is a moratorium on bank licenses and no applications are being accepted.

Application of Prudential Regulations to AML/CFT (c. 23.4):

522. Local banks licensed in Palau generally are not subject to the Core Principles; they are small and have limited operations and services. Foreign-owned branches are subject to the Core Principles and they are applied in a similar manner for AML/CFT purposes.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5):

523. The MLPCA covers MVTS either under the definition of “financial institution” (Section 3(k)(4)) as “persons or entities whose primary business activity includes money transmission services,” or as ARS as “all persons and their agents that provide a service for the transmission of money or value through an alternative or informal remittance system” (Section 8). The FIC has

indicated that it will categorize MVTS as ARS, but as the licensing authority for ARS, it has not yet taken any action to indeed license the ARS that operate in Palau.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6):

524. Although the FIC has indicated that it will categorize MVTS as ARS, it has not issued any regulations for the proper licensing and regulating of ARS, nor has it initiated any contact with the ARS to inform them of their duties under the MLPCA.

525. Money or currency changing services are only provided by the banks and, therefore, are subject to the supervision of the FIC.

Licensing and AML/CFT Supervision of other Financial Institutions (c. 23.7):

526. The non-prudentially supervised financial institutions that operate in Palau are credit unions, finance companies, insurance agents, and the above described MVTS. The activities of the credit unions, finance companies, and insurance agents are covered by the MLPCA, but there is no licensing requirement for supervisory purposes. Although the FIC has the powers under Section 14(b) to conduct random compliance audits to assess compliance with the AML/CFT requirements of the MLPCA, the FIC has not done this due to a lack of resources.

Guidelines for Financial Institutions (c. 25.1):

527. The FIC has not issued any guidelines to financial institutions to assist them in implementing and complying with AML/CFT requirements. Competent authorities indicated that regulations and guidelines will be developed and are expected to be issued by 2009.

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1):

528. The FIC has adequate powers to monitor and ensure compliance by financial institutions with the requirements to combat money laundering and terrorist financing. The FIC has been given the responsibility to inspect financial institutions to ensure compliance with AML/CFT requirements. As noted above, Section 49 of the FIA provides supervisory powers to the FIC. In addition, Section 14(b) of the MLPCA requires the FIC to conduct random compliance audits to assess compliance with the MLPCA. Further, the FIC has authority to contract for compliance audits for AML/CFT under Section 22(a) and Section 49 of the FIA.

Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2):

529. The FIC has authority to conduct inspections of financial institutions, including on-site and off-site inspections, to ensure AML/CFT compliance. Inspection powers are contained in FIA Sections 49 (Reporting of suspicious transactions and compliance with money laundering and counter-terrorism financing standards), Section 61 (Reports and examination), and the MLPCA Section 14(b). FIA Section 49 and the MLPCA Section 14(b) deal specifically with examining for AML/CFT compliance, while FIA Section 61 is broader and covers all examinations including prudential examinations. In addition, Section 79(a) FIA authorizes the FIC to visit the offices of financial institutions and to examine accounts, books, documents, and other records to give effect to the provisions of the FIA.

530. The FIC has not yet designed an AML/CFT examination program nor conducted any AML/CFT inspections.

Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1):

531. In addition to the powers mentioned in the previous paragraph to conduct inspections and examine records, the FIC also has authority to compel production of or to obtain access to all records, documents or information relevant to monitoring compliance. Section 62 of the FIA (Production of records and information for examiners and auditors) requires that financial institutions produce all books, minutes, accounts, cash, securities and investments, documents, and vouchers for the inspection of examiners or auditors authorized by the FIC to examine the financial institution as proscribed by FIA Section 61 (Reports and examination). The FIC does not require a court order to compel production of information from financial institutions under Section 62 of the FIA.

532. In addition, in Section 13(a) MLPCA it is made clear that although the FIU would need a court order during its investigations to access the information held by financial institutions, the FIU or FIC may review the records as part of a compliance audit.

Powers of Enforcement & Sanction (c. 29.4):

533. As noted above, Section 14(b) of MLPCA and Section 49 of the FIA prescribe that the FIC conduct examinations to assess compliance with the AML/CFT requirements. In addition, Section 14(b) states that any credit or financial institution that fails to comply with the requirements of Sections 5,7,8,9,10,11,12,13,14, or 20 are subject to remedial provisions, including fines, as provided for in regulations promulgated pursuant to the MLPCA. Any credit or financial institution that repeatedly fails to comply with the requirements of Sections 5,7,8,9,10,11,12,13,14, or 20 may have a fine imposed, or their license suspended or revoked, by the FIC after a hearing by the FIC Board.

534. Further, the MLPCA in Sections 29 (Money laundering penalties), Section 30 (Penalties applicable to corporate entities), Section 31 (Civil penalties) and Section 32 (Penalties for other offenses) provide penalties for violations of AML/CFT rules. The amended FIA at Section 63 (Infractions, penalties, remedial measures) provides for specific remedial measures and penalties on financial institutions and/or the financial institution's administrator or employees for violations of the FIA, any rule, regulation, or order issued by the FIC, or any other law applicable to financial institutions.

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1):

535. Section 14(b) of the MLPCA provides the FIC with remedial provisions, including fines, as provided for in regulations. However, these regulations have not been promulgated and it is, therefore, not clear what exactly these remedial provisions entail. In addition, the FIC has powers to impose fines and the suspension or revocation of bank licenses for repeated noncompliance with various preventive measures and provisions of the MLPCA. Further, the MLPCA at Section 29 (Money laundering penalties) provides that any person convicted of money laundering can be fined and imprisoned for up to 10 years. Section 30 (Penalties applicable to corporate entities) deals with corporate entities on whose behalf or for whose benefit a money laundering offense has been

committed by one of their agents. This section provides for fines, banning business activities temporarily or permanently, and a requirement to publicize judgments in the press. Section 31 (Civil penalties) addresses persons who fail to comply with various sections of the MLPCA and upon conviction can be subject to civil penalties not to exceed \$50,000. Finally, Section 32 (Penalties for other offenses) deals with persons and directors or employees of financial organizations who knowingly violate various sections of the MLPCA and can result in fines, imprisonment, and permanently banning work in the occupation which provided the opportunity for the offense to be committed. These sanctions provide effective, proportionate, and dissuasive criminal, civil, or administrative powers to deal with natural or legal persons that fail to comply with AML/CFT requirements. The FIC has not issued any regulations nor applied any sanctions for noncompliance with the AML/CFT requirements.

Designation of Authority to Impose Sanctions (c. 17.2):

536. The OAG is the primary entity that applies sanctions provided for under the MLPCA. The FIC is provided sanctioning powers regarding compliance failures in financial institutions in Section 14(b) MLPCA and Section 63 of the FIA (Infractions, penalties, remedial measures). Section 63 also refers to situations where a financial institution “refused to comply with any other law applicable to financial institutions,” and, therefore, the FIC can also apply the sanctions of the FIA for refusals to comply with the MLPCA.

Ability to Sanction Directors & Senior Management of Financial Institutions (c. 17.3):

537. Section 63 of the FIA (Infractions, penalties, remedial measures) permits the imposition of fines on the financial institution or corporation, or on its administrators or principal shareholders, Section 63(b)(4) and suspend temporarily or dismiss administrators from positions in a financial institution or corporation Section 63(b)(5). Further Section 31 (Civil penalties) of the MLPCA includes penalties for any person convicted for failure to comply with Sections 5,6,7,8,9,10,12,14,15, or 20 of the MLPCA.

Range of Sanctions—Scope and Proportionality (c. 17.4):

538. The FIC has a broad and proportionate range of sanctions under the MLPCA 14(b) that includes remedial provisions, fines, and suspension or revocation of bank licenses. In addition, Sections 29–32 of the MLPCA provide a broad range of sanctions for various ML/FT violations including disciplinary and financial sanctions. Section 63 of the FIA permits the imposition of written warnings, written agreements, cease and desist orders, fines, suspensions and dismissals, restrictions on operations of financial institutions, and license revocation.

Adequacy of Resources for Competent Authorities (c. 30.1):

539. The FIC is currently understaffed, lacks sufficient technical expertise, and is underfunded. The FIC is comprised of its Executive Commissioner, one examiner in training and an administrative officer. The budget for the FIC has been averaging around \$115,000 over the last three years and is not sufficient for the FIC to adequately carry out its duties as stated in the FIA and in the MLPCA. The FIC has recently assumed the additional responsibilities of the FIU when it was transferred from the OAG. No additional staff transferred with the FIU, nor were any additional financial resources

allocated. While there appears to be sufficient operational independence and autonomy in the FIC to conduct its operations without undue influence or interference, the lack of funding and appropriate staffing may compromise its ability to remain independent.

*Integrity of Competent Authorities (c. 30.2):*

540. Employees of the FIC are required to sign confidentiality agreements and take an oath of secrecy for the purposes of ensuring confidentiality. Members of the Commission are also subject to the provisions of the Code of Ethics and members of the Board as well as employees are governed by its by-laws that have specific provisions that ensure compliance with the Code of Ethics. The Code of Ethics regulates transactions by national and state public employees, officials and elected officials, as well as persons making campaign contributions. It prohibits personal gain through governmental transactions, prohibits conflict of interest, restricts incompatible outside employment, prohibits solicitation of gifts, and severely restricts the size of campaign contributions, limiting such contributions to Palauan citizens.

*Training for Competent Authorities (c. 30.3):*

541. The Executive Commissioner has received some training on AML/CFT matters. Training included ML/FT typologies and a training course in how to conduct AML/CFT mutual evaluations. In addition, the UNODC has provided the FIC with an interactive training module on AML/CFT in which the staff of the FIC are participating. There has been no other formal AML/CFT training program for the FIC staff.

*Statistics (applying R.32):*

542. The FIC has not developed an AML/CFT compliance examination program nor has it conducted any AML/CFT examinations. There are no statistics regarding AML/CFT compliance matters maintained in Palau.

*Insurance Agents:*

543. Rec. 17, 23, 25, 29: Under the MLPCA, insurance agents are covered as either “cash dealers” or as “OTC exchange dealers” in Section 4(e)(1). If they are categorized as “OTC exchange dealers,” they are required to be licensed by the Minister of Justice under Section 15 of the MLPCA. If they are categorized as “cash dealers,” there are no licensing or supervisory requirements under the MLPCA. There is no insurance legislation for prudential supervision of insurers and insurance intermediaries. The MOJ has not licensed insurance agents as OTC exchange dealers, nor has the FIC conducted compliance audits under the MLPCA, and the authorities have not indicated whether insurance agents should be treated as “cash dealers” or “OTC exchange dealers.” No insurance agents have been sanctioned under the MLPCA.

544. Under Section 15(a) of the Act, before commencing business in Palau, OTC exchange dealers are required to submit a declaration of activity to the MOJ, including proof of the lawful origin of the capital required to establish the business, for the purpose of obtaining a license to establish and operate an exchange dealer business. The reason for the submission of the declaration to the MOJ is

unclear, since the FIC is the logical authority for financial institutions who engage in money brokering.

545. It is unclear why insurance agents are classified as cash dealers or OTC exchange dealers since they do not deal with foreign exchange or large sums of cash. In Palau, the banks engage in foreign exchange brokering and this activity is captured as an activity of “financial institutions” and “credit institutions” under Section 4(k)(9) of the MLPCA.

546. The operating insurance agents remain largely unsupervised for AML/CFT compliance and are unaware of ML/FT risks and vulnerabilities in the insurance sector and of their obligations under the AML/CFT regime. Palau does not have an insurance association, but insurance agents are members of the Chamber of Commerce.

547. There is no insurance legislation for prudential supervision of insurers and insurance agents. No guidance has been issued to OTC exchange dealers on AML/CFT and insurance agents have not filed any STRs with the FIU so they have not received any feedback. The MOJ’s compliance with FATF Rec. 30 is unknown since the assessors were unable to meet with appropriate representatives to discuss the licensing and supervision of cash dealers or OTC exchange dealers.

Effectiveness:

548. Although the FIC has sufficient powers to enforce the requirements of the MLPCA, the FIC has never performed an AML/CFT inspection and consequently never has made use of its sanctioning powers. In addition, the fact that the FIC is under-resourced, but has received additional tasks, will not support the FIC paying the necessary attention to AML/CFT supervision.

### **3.10.2. Recommendations and Comments**

- Palau should provide adequate funding to the FIC to make sure it is properly staffed to undertake its AML/CFT supervisory function.
- Once the FIC is properly staffed, it should develop and execute an effective AML/CFT supervisory program.
- Staff should receive appropriate AML/CFT training on an ongoing basis.
- The FIC should issue guidelines and provide appropriate feedback to assist financial institutions in applying AML/CFT requirements.
- Determine whether insurance agents should be classified as “cash dealers” or “OTC exchange dealers” and designate the AML/CFT supervisor accordingly, that is the FIC under Section 14(b) or the MOJ under Section 15(b) of the MLPCA.
- The designated supervisor should commence a program of awareness raising for insurance agents and a supervisory program that includes off-site and on-site supervision.
- The FIC should promulgate regulations providing for remedial provisions as required by Section 14(b) MLPCA.



### 3.10.3. Compliance with Recommendations 17, 23, 25 & 29

	Rating	Summary of factors underlying rating
<b>R.17</b>	LC	The FIC has not issued any regulations providing for remedial provisions. The FIC has sanctioning powers; however, it has not used them for AML/CFT purposes.
<b>R.23</b>	NC	The FIC is not properly funded and staffed and has not supervised its financial institutions to ensure effective implementation of AML/CFT requirements. No designated supervisor for cash dealers and OTC exchange dealers. Although the FIC has indicated that it will categorize MVTS as ARS, no implementation of the MLPCA has commenced.
<b>R.25</b>	NC	Palau does not provide guidelines to its financial institutions to assist in implementation and compliance with AML/CFT requirements.
<b>R.29</b>	PC	Palau meets the requirements regarding supervisory powers to monitor and inspect financial institutions; however, it has not utilized these powers to ensure compliance.

### 3.11. Money or Value Transfer Services (SR.VI)

#### 3.11.1. Description and Analysis (summary)

Legal Framework:

549. MVTS in Palau are provided either by licensed foreign banks (due to their access to SWIFT accounts) or by alternative remittance systems (ARS). The regulatory regime for the banks has been described in the section dealing with the banking sector, and therefore the description in this Section focuses substantially on the oversight of ARS.

550. Under the MLPCA, MVTS are covered under the definition of “financial institution” in Section 3(k)(4) as “money transmission services” and under “ARS” in Section 8. There is an inconsistency of coverage between these two categories under the MLPCA since there are different thresholds for record keeping and reporting requirements. Under Section 5, financial institutions must keep reports of all transactions made in cash or bearer securities of at least \$10,000 or its equivalent in foreign cash or bearer securities. However, under Section 8 of the MLPCA, the ARS are required to keep regular reports of all transactions made in cash or bearer securities in excess of \$1,000, or its equivalent in foreign cash or bearer securities.

551. Under Section 6(a) of the MLPCA, any international transfers of money or securities involving a sum of at least \$5,000 or its equivalent must be made through a financial or credit institution licensed under the laws of Palau.

Designation of Registration or Licensing Authority (c. VI.1):

552. ARS have been recently brought under the MLPCA with the FIC as the licensing authority under Section 8(a) MLPCA. However, the FIC has not yet identified the ARS, except for the three largest operators, including Western Union, so they are still operating informally. The existing ARS operate under a business license from the DRT, a business license from the State that they operate in, and an additional licensing from the FIB for those that are foreign-owned. The DRT has issued business licenses to 14 providers of MVTs. Although Section 8 of the MLPCA provides for the issuance of regulations by the FIC, no regulations have been issued as yet.

Application of FATF Recommendations (applying R.4-11, 13-15 & 21-23, & SRI-IX)(c. VI.2):

553. Rec. 4: As indicated in the analysis of FATF Rec. 4 of this section, Palau does not have any bank secrecy laws that would inhibit the implementation of the FATF Recommendations. Section 26 of the MLPCA (Disallowance of bank secrecy) states that banking or professional secrecy may not be invoked as grounds for refusal to provide information referred to in Section 12 (record-keeping requirements) or required in connection with an investigation which relates to money laundering and is ordered by or carried out pursuant to an order of the Supreme Court. There is no financial institution secrecy law in Palau that would inhibit the implementation of the FATF Recommendations. Information sharing between competent authorities, domestically or internationally, and between financial institutions in compliance with FATF Recommendations is not prohibited by Palauan law.

554. Rec. 5: ARS under Section 8(b) of the MLPCA are required to keep regular reports of all transactions made in cash or bearer securities in excess of \$1,000, or its equivalent in foreign cash or bearer securities. Such reports are required to have accurate and meaningful originator and recipient information including, but not limited to name, address, and account number. Such information must remain with the transfer or related message through the payment chain. Under Section 8(c) of the MLPCA, ARS are required to file a CTR within 15 days of the transaction with the FIU. The FIU has not yet issued any regulations and a CTR form template to ARS. These provisions would satisfy the requirements of criterion 5.2.b. and 5.2.c. to the extent that ARS would have to take CDD in order to obtain accurate and meaningful originator information. There is no prohibition of the use of fictitious name as required under criterion 5.1. There are no requirements for ARS for the verification of customer identification as required under criterion 5.3; to identify and verify beneficial owners in accordance with criterion 5.5; to perform enhanced CDD on high-risk customers as required under criterion 5.8; to allow to perform simplified CDD as permitted under criteria 5.9-5.12.

555. Rec. 7: ARS are not banks so they do not have correspondent relationships with other banks. They have accounts with the foreign banks in Palau to transfer funds via international wire transfers and are subjected to the requirements of Section 6 of the MLPCA when conducting such transactions.

556. Rec. 10: Similar to the analysis of Rec. 10 for financial institutions, ARS are not required to keep records of all transactions for five years following the transaction or account files and business correspondence as required under criteria 10.1 and 10.2. ARS are required to keep records following the requirements of Section 12 of the MLPCA. The requirements of Section 12(a) of the MLPCA are to keep records of customer identification for five years after the relationship with the customer has ended, and under Section 12(b) records of transactions conducted by customers that fall under Section 5 and the STRs and the unusual transactions or transactions that warrant special attention filed under Section 11(b) for five years following the transaction. There is no requirement to ensure

that all customer and transaction records and information are available on a timely basis to domestic competent authorities, as required under criterion 10.3.

557. Rec. 11: In accordance with criteria 11.1. and 11.2, under Section 8(b) and 11(b) of the MLPCA, ARS are required to pay special attention to all complex transactions, unusually large transactions, and unusual patterns of transactions, that have no apparent economic or lawful purpose, to examine as far as possible the background and purpose of such transactions, to set forth their findings in writing, and provide such findings to the FIU upon completion. With respect to criterion 11.3, ARS are to retain their records of their findings pursuant to Section 12. Section 12 on record keeping, however, refers only to financial and credit institutions, it does not mention ARS. The MLPCA should be amended to clarify and make these requirements consistent. In addition, the MLPCA should also address that ARS should also keep their findings available for their auditors.

558. Rec. 13: In accordance with the requirements of criterion 13.1, ARS are also required under Section 11 of the MLPCA to immediately file STRs with the FIU where they suspect that the transaction involves funds that are derived from, related to, or are the proceeds of a crime. They are required to keep a copy of the STR in accordance with Section 12 of the Act. The STR must include information about the origin and destination of the money, the purpose of the transaction, and the identity of the sender and receiver in accordance with Section 20 of the MLPCA. Section 20 of the Act requires the filing of STRs with the FIU, of transactions carried out, even if it was not feasible to defer their execution or if it became clear only after the transaction that it involved a ML or FT offense. The FIU has not issued any forms to report CTRs or STRs. Regarding criterion 13.2, there is no adequate requirement to report funds that are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism. Section 20(a) excludes the requirement to file STRs for attempted transactions in accordance with criterion 13.3. There is no prohibition of filing STRs that may involve tax matters in accordance with criterion 13.4.

559. Rec. 14: Under Section 22 of the MLPCA, ARS, including all persons, such as, directors, officers and employees, who file STRs with the FIU in good faith, are protected from criminal and civil liability for breach of any restriction on disclosure of information, in accordance with criterion 14.1. There is no explicit prohibition for tipping off in the MLPCA, as required under criterion 14.2. Section 32(a)(1) of the MLPCA allows for a penalty of not more than two years' imprisonment or a fine not to exceed \$10,000 for persons and directors or employees of organizations that carry out or advise on financial operations who knowingly disclose to the owner of the sums or to the principal of the transaction, a report which they are required to make or the action taken on it as specified in Section 11, 13, 20, 25 of the MLPCA.

560. Rec. 21: In accordance with criteria 21.1-2, ARS are required to pay special attention to transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter ML or FT. They are also required to pay special attention to transactions that are complex, unusually large, or have unusual patterns that have no apparent economic or lawful purpose, and to examine as far as possible the background and purpose of the transactions, the origin and destination of money, the identity of the sender and receiver. All findings must be recorded in writing and kept in accordance with Section 12 of the Act. There are no provisions in the MLPCA, other legislation, or regulations that would allow Palau to apply appropriate counter-measures to the jurisdictions that do not have adequate systems in place to deter ML or FT, in accordance with criteria 21.3. No regulations or guidance have been in place to enable ARS to identify those jurisdictions.

561. There are no provisions under the MLPCA, other legislation or regulations that would satisfy the requirements for ARS under criterion VI.2 to comply with FATF Recs. 6, 8, 9, 15 and 22.

562. In practice, two of the three known ARS are subsidiaries of foreign money remitters and report to head offices in Sydney, Australia and the Philippines. They both have computerized systems that require the entry of CDD identification, such as, customer name, address and ID number. However, verification of customer CDD is not always performed, because the system only requires the ID number. One ARS indicated that there is a limit of \$3,500 per transaction and a daily limit of \$7,500 per customer. The other ARS offers a pre-paid remittance card with a maximum limit of \$2,500 that can be delivered to the receiver's home address in the Philippines. The card is both an ATM and a Visa that can be used at point-of-sale counters. Only one card can be issued to a person at any time, but there is no limit to the number of cards that a sender can purchase for different receivers. This poses a ML risk for the use of the card for structuring purposes.

563. The compliance function of these ARS operates largely from the group compliance unit at the respective head offices. Although these 2 ARS indicated that they have received training from their head offices, there is low awareness of ML and FT, the Palau AML/CFT laws and their obligations under the MLPCA, including the requirement to be licensed by the FIC. No STRs have been filed with the FIU, although there have been a few cases of attempted transactions that were not completed or denied, where the ARS suspected ML. The assessors did not meet with the other known ARS and the others have not yet been identified by the FIC, although the DTR indicated that it has issued 11 other business licenses to MVTs.

#### Monitoring of Value Transfer Service Operators (c. VI.3):

564. The FIC has recently been legally designated as the ARS supervisor under the MLPCA for licensing and supervision. As indicated above, the FIC is yet to identify the MVTs and although it has indicated that it will categorize the MVTs as ARS, no implementation of the requirements under the MLPCA with respect to ARS have been implemented. Consequently, MVTs that are not banks are largely unsupervised for AML/CFT compliance under the MLPCA.

#### List of Agents (c. VI.4):

565. There is no requirement for ARS to maintain a current list of agents which must be made available to the designated competent authorities. However, Section 8(a) requires that all persons and their agents are licensed by the FIC, the FIC will, therefore, know all agents after the licensing process.

#### Sanctions (applying c. 17.1-17.4 in R.17)(c. VI.5):

566. The sanctions available under Section 29–31 apply to ARS, as discussed under Section 3.10 of this report, these sufficiently meet the requirements under Rec. 17.

#### Additional Element—Applying Best Practices Paper for SR VI (c. VI.6):

567. Not specifically applied—no regulations or guidance issued to ARS.

Effectiveness:

568. Palau has made a positive start toward bringing the informal ARS under a formalized monitoring system through licensing and supervision by the FIC under the MLPCA. However, the FIC should implement the provisions under the MLPCA regarding ARS by identifying the ARS operating in Palau. The FIC should raise the awareness of operating ARS about their new obligations under the MLPCA and invite and process ARS license applications. Thereafter, the FIC should commence a program of ongoing supervision of ARS.

### **3.11.2. Recommendations and Comments**

- Amend the MLPCA or issue regulations to provide for the prohibition of the use of fictitious name as required under criterion 5.1; for the verification of customer identification as required under criterion 5.3; for the identification and verification of beneficial owners in accordance with criterion 5.5; performance of enhanced due diligence on high-risk customers as required under criterion 5.8; allowance to perform simplified CDD as permitted under criterion 5.9-5.12.
- Amend the MLPCA or issue regulations that include provisions that satisfy the requirements under FATF Recs. 6, 8, 9, 15, and 22.
- Amend Section 12 of the MLPCA or issue regulations to require that ARS keep all necessary records on transactions for five years following the transaction and account files and business correspondence as required under Rec. 10.
- Include a provision in the MLPCA or issue regulations to require ARS to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities.
- The FIU should issue STR and CTR form templates to ARS.
- Amend the MLPCA or issue regulations to require ARS to file STRs if they suspect that the funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.
- Amend the MLPCA or issue regulations to require that ARS file STRs for attempted transactions in accordance with criterion 13.3.
- Amend the MLPCA or issue regulations to explicitly prohibit ARS from disclosing (“tipping-off”) the fact that a STR or related information is being filed with the FIU, as required under criterion 14.2.
- Amend the MLPCA or issue regulations that would allow Palau to apply appropriate counter-measures to the jurisdictions that do not have adequate systems in place to deter ML or FT, in accordance with criterion 21.3. Issue guidance to ARS to enable them to identify those jurisdictions.

### 3.11.3. Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	<p>ARS have not been licensed nor identified</p> <p>No regulations issued for ARS.</p> <p>ARS are not required to conduct full CDD on transactions as required in Rec. 5.</p> <p>No provisions for compliance with FATF Recs. 6, 8, 9, 15, and 22.</p> <p>ARS are not required to keep all necessary records of all transactions for five years after the transaction is completed nor records of account files and business correspondence.</p> <p>No requirement for ARS to file STRs for attempted transactions.</p> <p>The reporting of suspicious transactions related to terrorism is not sufficiently covered in the MLPCA in that there is no adequate requirement to report funds that are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.</p> <p>No explicit requirement to prohibit ARS from disclosing (“tipping-off”) the fact that a STR or related information is being filed with the FIU.</p> <p>No requirement to apply appropriate counter measures to the jurisdictions that do not have adequate systems in place to deter ML or FT, in accordance with criterion 21.3.</p>

#### **4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS**

##### **4.1. Customer Due Diligence and Record keeping (R.12)**

###### **4.1.1. Description and Analysis**

569. The designated non-financial businesses and professions (DNFBPs) in Palau comprise company service providers (CSPs) and lawyers.

570. The DNFBP sector has low ML and FT vulnerabilities due to the limited scope of business activities and the small size of the sector. The assessors have not identified any other DNFBPs which are also highly vulnerable to ML and FT.

571. There are 124 licensed notaries under Title 11 PNC Section 702 in Palau, but they fall outside the intended scope of the FATF standard since they provide only the basic service of witnessing signatures and certification of photocopies of documents as true copies of the originals and do not prepare for or engage in any financial transactions for clients.

572. There are no trust service providers (TSPs) in Palau and there is no specific trust law that would allow for the establishment of domestic trusts, although trusts are recognized as a type of corporation. The Corporation Regulations Section 2.10 allow for nonprofit corporations that are trusts, and under the FIA Section 51a(15) banks can provide trust services. No trusts have been incorporated as nonprofit corporations and no banks provide trust services. There are a few family trusts that hold the titles to land in Palau.

573. There are about three auditors who also provide accounting services in Palau, but they fall outside the intended scope of the FATF standard since they do not engage in the qualifying DNFBP activities that would require coverage under the standards. There are no practicing accountants, other than the auditors who also provide accounting services, since the market for accounting services is miniscule.

574. The only legal service providers in Palau are Palau Bar Association attorneys. There are approximately 60 Palau Bar members, of which approximately half is National or State Government Attorneys. There are approximately 10 off-island attorneys who are Palau Bar members, these attorneys only appear occasionally (generally once or twice, or less) in Palau each year, usually on behalf of a long-established corporate client. The approximately 20 local Bar members engaged in private practice provide general legal services, including criminal defense, civil litigation, estate planning, and company formation. Attorneys have ethical rules which forbid active participation in any criminal activity.

575. Although there is no separate license requirement for the provision of CSP services in Palau, there are about 13 attorneys who provide company formation services of domestic legal persons. CSPs do not provide any of the other services under the definition of CSPs in the FATF Recommendations.

576. There are no licensed casinos in Palau. There is a law that would allow for the licensing of internet casinos but although two internet casino licenses were granted under this law, they expired

without the licensees commencing operations. There is no law that would allow for the licensing of land-based casinos.

577. The real estate business in Palau would not fall under the category of real estate agents in definition of DNFBPs in the FATF Recommendations. All real estate property in Palau is owned by Palauan nationals, including tribal clans. It is unconstitutional for non-Palauans to own land. The typical buying and selling of real estate among Palauans is conducted through private negotiations between the buyer and seller and do not involve real estate agents. In cases where agents are involved, this would be for the leasing of property to non-Palauans and rentals. The only Supreme Court decision on the matter found that a 99 year lease, which in effect alienated the land for five generations was tantamount to land ownership by non-Palauans and thus found that it would be illegal and thus unenforceable.

578. There are no dealers in precious metals or dealers in precious stones in Palau that would be categorized as such under the FATF Recommendations. The few jewelry stores carry a limited and low cost selection of basic gold rings and necklaces and all transactions would fall under the threshold for coverage under the FATF Recommendations. There is a limited trade, within traditional Palauan Clans and Family Groups of “Palauan Money,” typically either beads with historical value, or turtle shell plates, but these forms of money are not publicly sold or traded, and are not available to foreigners. They do not easily lend themselves to money laundering as they have no corresponding publicly accepted monetary value.

#### Legal Framework:

579. Only casinos are covered under the MLPCA under Section 4(e)(3) as a “cash dealer” or “OTC exchange dealer.” If they are categorized as “OTC exchange dealers” they are required to be licensed by the Minister of Justice under Section 15 of the MLPCA. If they are categorized as “cash dealers,” there are no licensing or supervisory requirements under the MLPCA.

580. Although there are no TSPs in Palau, trustees or managers of unit trusts are covered as “cash dealer” or “OTC exchange dealer” (MLPCA Section 3(e)(4)) and depending on whether they are licensed as a “cash dealer” or “OTC exchange dealer,” their coverage under the MLPCA would be similar to that of casinos.

CDD Measures for DNFBPs in Set Circumstances (Applying c. 5.1-5.18 in R. 5 to DNFBP) (c. 12.1, R. 6 & 8-11 to DNFBP) (c.12.2):

581. Rec. 5: The CSPs and lawyers are not covered under the MLPCA, and they do not in practice obtain CDD identification documentation and would not satisfy the requirements under FATF Rec. 12.

#### *Casinos:*

582. There are no licensed casinos in Palau and there are no established criteria on the circumstances where they would be licensed as “cash dealers” or “OTC exchange dealers.” Casinos classified as “cash dealers” are not required to conduct CDD on occasional customers under Section 5 of the MLPCA, in accordance with criterion 5.2.b. Casinos classified as “OTC exchange dealers”



whose sole occupation is that of an OTC exchange dealer and who are not otherwise licensed by the FIC as a financial institution are required to conduct CDD under Section 15(b) of the MLPCA. Under this Section, they are required to verify the identity of their customers, by requiring the presentation, prior to any transaction involving a sum greater than the equivalent of \$2,500, of an official original document of identification of the customer that is unexpired and bears a photograph, a copy of which is taken. As “cash dealers,” casinos would be obligated to conduct CDD on their customers under Section 7 of the MLPCA.

583. Rec. 6 and 8: There are no provisions regarding PEPs for compliance with Rec. 6, or for non-face-to-face transactions or new technologies for OTC exchange dealers under the MLPCA.

584. Rec. 9: There are no provisions in the MLPCA regarding introduced business for OTC exchange dealers.

585. Rec. 12: Casinos classified as “cash dealers” are not required to keep records under Section 12 of the MLPCA or any other Section that requires record keeping, so they would not meet the requirements of FATF Rec. 10. Casinos classified as “OTC exchange dealers” whose sole occupation is that of an OTC exchange dealer and who are not otherwise licensed by the FIC as a financial institution are required to keep records under Section 15(c) of the MLPCA. Under this Section, they are required to record in chronological order, all transactions, their nature, and amount, indicating the customer’s complete name, and maintain such information in a register, numbers and signed by the competent administrative officer of the business, for five years after the last transaction is recorded. This requirement would only partially meet the requirements of criterion 10.1.1, since there is no requirement to maintain customer identification documentation for at least five years and there is no requirement to obtain customer information for transactions under \$2,500, unless the transactions are unusual or unjustifiably complex.

586. There is no requirement to maintain records of the identification data obtained under Section 15(a) for transactions over \$2,500 or unusual or unjustified complexity for at least five years following the termination of a business relationship, nor is there any mention of a requirement to maintain records of account files and business correspondence for five years following the termination of the business relationship pursuant to criterion 10.2.

587. OTC exchange dealers are not required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities.

588. Rec. 11: Casinos classified as “OTC exchange dealers” whose sole occupation is that of an OTC exchange dealer and who are not otherwise licensed by the FIC as a financial institution are required to conduct CDD under Section 15(b) of the MLPCA. Under this Section, they are required to verify the identity of their customers, by requiring the presentation, in the case of any transaction conducted in conditions of unusual or unjustified complexity, of an official original document of identification of the customer that is unexpired and bears a photograph, a copy of which is taken. They are not required to examine as far as possible the background and purpose of such transactions and to document their findings in writing, pursuant to criterion 11.2. Consequently, they would not be in compliance with criterion 11.3.

#### 4.1.2. Recommendations and Comments

- Broaden the list of persons covered by the AML/CFT laws to explicitly include the DNFBPs operating in Palau. At a minimum, the AML/CFT legislation should apply to lawyers and CSPs when they engage in the activities identified in definition of DNFBPs in the FATF Recommendations.
- Include the requirements for CDD and record-keeping measures for lawyers and CSP activities in the AML/CFT legislation or regulations issued by the respective regulators.
- Require OTC exchange dealers to obtain and verify CDD identification without a threshold and be subject to the full requirements of FATF Rec. 5-6, 8-11.
- Provide training to lawyers and CSPs on their obligations for CDD and record-keeping measures when the AML/CFT laws are amended to include them.

#### 4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
<b>R.12</b>	<b>NC</b>	None of the DNFBPs operating in Palau, that is, lawyers and CSPs, are covered by the AML/CFT legislation.

### 4.2. Suspicious Transaction Reporting (R.16) (applying R.13 to 15 & 21)

#### 4.2.1. Description and Analysis

Requirements (applying 13-15 & 21 to DNFBPs):

Legal Framework:

589. Casinos are covered under the MLPCA as “cash dealers” and “OTC exchange dealers” and are obligated under Section 20 to file STRs on transactions referred to under Section 11 of the Act.

590. All other DNFBPs existing in Palau, that is, lawyers and CSPs, are not covered under the AML/CFT laws.

591. Section 11(a) MLPCA provides that where a cash dealer has reasonable grounds to suspect that a transaction involves funds that are derived from, related to, or are the proceeds of a crime, the cash dealer shall immediately provide information as to the origin and designation of the money, the purpose of the transaction, and the identity of the transacting parties to the FIU as required in Section 20 (requirement to report suspicious transactions).

592. Section 20(a) provides that OTC exchange dealers (as defined in Section 15) and cash dealers shall be required to report to the FIU transactions referred to in Section 11 (STR reporting).

593. Section 20 also states that the persons referred to in this Section shall be required to report the transactions carried out even if it was not feasible to defer their execution or if it became clear only after completion of a transaction that it involved a money laundering offense or terrorist financing. Any natural or legal person referred to in this subsection shall also be required to report without delay any information that might confirm or invalidate the suspicion of a violation of Section 3 (criminalization of money laundering).

594. Casinos classified as “OTC exchange dealers” are not covered for compliance with FATF Recommendation 21.

595. In practice, no DNFBP has reported any suspicious transaction with the FIU. They do not monitor for suspicious transactions and are largely unaware of the AML/CFT legislation.

#### **4.2.2. Recommendations and Comments**

- Broaden the list of persons covered by the AML/CFT laws to explicitly include the DNFBPs operating in Palau. At a minimum, the AML/CFT legislation should apply to lawyers and CSPs when they engage in the activities identified in definition of DNFBPs in the FATF Recommendations.
- Include the requirements for suspicious transaction monitoring and reporting measures for lawyers and CSP activities in the AML/CFT legislation or regulations issued by the respective regulators, in accordance with the requirements of FATF Rec. 16.
- Provide training to lawyers and CSPs on their obligations for monitoring for and reporting of suspicious transactions measures when the AML/CFT laws are amended to include them.

#### **4.2.3. Compliance with Recommendation 16**

	<b>Rating</b>	<b>Summary of factors relevant to s.4.2 underlying overall rating</b>
<b>R.16</b>	<b>NC</b>	None of the DNFBPs operating in Palau, that is, lawyers and CSPs, are covered by the AML or the CFT Law.

### **4.3. Regulation, Supervision, and Monitoring (R.24-25)**

#### **4.3.1. Description and Analysis**

Legal Framework:

Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3):

596. Although casinos are covered under the MLPCA as a “cash dealer” or an “OTC exchange dealer,” there are no licensed casinos in Palau. The FIB issued two internet casino licenses, but these 7-year concessions expired without the licensees commencing operations. There is no law that would allow for the licensing of land-based casinos. There is no designated AML/CFT supervisor of casinos.

Monitoring Systems for Other DNFBPs (c. 24.2 & 24.2.1):

597. Other DNFBPs in Palau, that is, lawyers and CSPs, are licensed by the Bar Association. The Bar Association has about 60 members. The association does not have sanctioning powers and has never expelled a member. There is no AML/CFT oversight by the association.

Guidelines for DNFBPs ( applying c. 25.1):

598. No guidance has been issued to the DNFBPs in Palau regarding AML/CFT preventive measures.

#### **4.3.2. Recommendations and Comments**

- Broaden the list of persons covered by the AML/CFT laws to explicitly include the DNFBPs operating in Palau. At a minimum, the AML/CFT legislation should apply to lawyers and CSPs when they engage in the activities identified in definition of DNFBPs in the FATF Recommendations.
- A supervisory and control authority should be designated for each DNFBP sector. All DNFBPs subject to the AML/CFT legislation should be subject to oversight for compliance with AML/CFT requirements.
- Consider amending the AML/CFT legislation to require that the designated regulators for the respective DNFBPs issue AML/CFT regulations to DNFBPs that cover the requirements under FATF Recommendations 12, 16, and 24.
- Agencies assigned oversight responsibility should have adequate legal authority, resources and, capacity to monitor and enforce compliance with AML/CFT requirements.
- Conduct AML/CFT awareness-raising training of all operating DNFBPs, that is, lawyers and CSPs.

#### **4.3.3. Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)**

	<b>Rating</b>	<b>Summary of factors relevant to s.4.3 underlying overall rating</b>
<b>R.24</b>	<b>NC</b>	None of the DNFBPs operating in Palau, that is, lawyers and CSPs, are covered by the AML or the CFT Law.
<b>R.25</b>	<b>NC</b>	No guidance has been issued.

#### **4.4. Other Non-Financial Businesses and Professions—Modern-Secure Transaction Techniques (R.20)**

##### **4.4.1. Description and Analysis**

Legal Framework:

599. The Palauan authorities have included gambling activities, such as operators of gambling houses, bingo parlors, and lotteries in the category of “cash dealer” or “OTC exchange dealer” in Section 4(e)(3) of the MLPCA, but no specific regulations have been issued for other categories of nonfinancial businesses and professions.

Other Vulnerable DNFBPs (applying R. 5, 6, 8-11, 13-15, 17 & 21 c. 20.1):

600. There are no gambling houses, bingo parlors, or lotteries operating in Palau and the assessors have not identified any other nonfinancial businesses and professions that should be subject to the AML/CFT measures. It is the assessors’ view that Palau has considered the need to apply AML/CFT measures to those nonfinancial businesses that they regard as presenting a potential ML or FT risk, since specific activities have been listed in the MLPCA.

Modernization of Conduct of Financial Transactions (c. 20.2):

601. The mission was informed that there is a very high cash usage in the Palauan economy, although no statistics were provided by the authorities. The authorities are supportive of the increasing use of modern means of conducting financial services such as credit and ATM cards, but the authorities have not issued any guidance to banks on the thresholds for cash transactions (except for the requirement under Section 6(a) of the MLPCA for all international transfers of money or securities involving a sum of at least \$5,000 or its equivalent to be made through a credit or financial institution licensed under the laws of Palau). There are ATMs in the commercial center of Koror and there is one at the international airport, but banks are not expanding their network in Palau in terms of anticipated establishment of branches.

#### **4.4.2. Recommendations and Comments**

- Continue to encourage the use of secure transfer systems when conducting financial transactions, such as ATMs and credit cards in order to reduce reliance on cash transactions and consider issuing guidance to banks on thresholds for cash transactions.

#### **4.4.3. Compliance with Recommendation 20**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.20</b>	<b>LC</b>	There is still very high cash usage in the Palauan economy.

## **5. LEGAL PERSONS AND ARRANGEMENTS & NONPROFIT ORGANIZATIONS**

### **5.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33)**

#### **5.1.1. Description and Analysis**

##### **Legal Framework:**

602. Corporations are regulated by way of the Corporations Act (Title 12 PNC) and the accompanying Corporation Regulations. The Registrar of Corporations, who is also the Attorney General, holds as custodian all documents required for the corporation, including the articles of incorporation and bylaws. Corporations are required to file annual statements with the Registrar of Corporations.

603. The Foreign Investment Board (FIB) must approve all legal entities that are not 100 percent Palauan owned before they are licensed to conduct business in Palau in accordance with the Foreign Investment Act of 1994.

604. The DRT issues business licenses to Sole Proprietors, Partnerships, Corporations, and foreign Limited Liability Companies that engage in business activities in Palau. Corporations can have multiple licenses issued, as they must have a license for each location and/or for each business activity. There are approximately 1,700 current business licenses issued controlled by about 700–800 corporations or persons.

##### **Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):**

605. The President, by way of the Registrar, grants charters of incorporation for the establishment and functioning of business organizations, associations of persons for any lawful purpose. When an association of persons seeks a charter as a corporation, the articles of association have to be submitted for approval. These articles have to include information on, among others, details of the incorporators, shareholders and directors, provisions for management and for shareholding. There are no specific obligations regarding obtaining information on the ultimate beneficial owners of the corporation, nor does the law provide for any measures on ensuring transparency or preventing unlawful use of legal persons.

606. The Registrar does not conduct any examinations or other checks to determine if the data given on the registration forms is accurate with respect to the beneficial owners or shareholders. Each corporation must file an annual statement which contains lists of the current officers and shareholders of the corporation. The Registrar will check if the annual statement is filed, but not if it is accurate. The Registrar indicated that his office does not have the resources nor a legal reason to check if the information on the beneficial owners is correct.

607. Foreign corporations and any legal entities having foreign ownership or investment must be pre-approved by the FIB. Approval from the FIB is also required prior to any transfer of the ownership in a previously-approved foreign business entity. Among the information that the FIB requests are copies of passports and police clearances for the foreign owners, (principal) shareholders and investors. This police clearance is requested from the law enforcement authorities in the place of current residence of the persons, the FIB does not request information on previous addresses.

Access to Information on Beneficial Owners of Legal Persons (c. 33.2):

608. The Corporation Regulations stipulate that an interested party can request copies of the documents of the corporation from the Registrar. As such, all competent authorities, both local and foreign, as well as the public can request from the Registrar of Corporations copies of a corporation's articles of incorporation, bylaws, stock affidavits, and the certificate of status. The Registrar can charge a fee for copying of \$20 plus \$1 per page. The records can be accessed in a timely manner.

609. According to the Regulations, Section 5.4, the annual statements are only available to 'officers of Republic,' the officers or stockholders of the corporations, and bona fide creditors. The Regulations do not give a definition of 'officers of Republic', but it would include government officials as well as those officers appointed by the President to audit and report on the accounts of corporations authorized to do business within Palau (Section 104(a) Corporations Act). Other persons can be permitted access if the Registrar is satisfied that there is a lawful and proper purpose.

610. Access to the information at the FIB is freely available; persons who want the information can call or come by the office to look into the files. Government agencies can have access to the business licenses database of the DRT upon request; the public is only given access if there is a valid reason.

Prevention of Misuse of Bearer Shares (c. 33.3):

611. All corporations must include a shareholder list at time of incorporation and must update the list annually with the Registrar of Corporations. Due to the registration requirement and shareholder list requirement, it is impossible to legally issue bearer shares.

Additional Element—Access to Information on Beneficial Owners of Legal Persons by Financial Institutions)(c. 33.4):

612. Financial institutions can request, at a payment, a copy of the corporation paperwork as filed at Registrar of Corporations. The FIB provides financial institutions access to information on foreign investors, especially since the FIB requires that the foreign-owned corporation keeps a deposit in a joint account with the FIB.

Effectiveness:

613. The information on corporations and their ownership and control structure that is available is easily and in a timely manner accessible for both government agencies and the public in Palau. However, the information might not always be accurate or current as changes in ownership or management are only reported to the Registrar when filing the annual statement, there is no information available on the ultimate beneficial owner, and the Registrar does not check if the information is accurate.

**5.1.2. Recommendations and Comments**

- There should be measures preventing the unlawful use of corporations.

- There should be measures and mechanisms to ensure that information on the beneficial owners and control structure of corporations is available in an adequate and accurate manner.
- The Registrar of Corporations should implement measures to ensure that the information on corporations and their beneficial ownership and control structure is adequate, accurate and current.

### 5.1.3. Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
<b>R.33</b>	<b>PC</b>	<p>Besides the basic registration requirements, there are no additional obligations regarding obtaining information on the ultimate beneficial owners and control structure of corporations, nor does the law provide for any measures on ensuring transparency or preventing unlawful use of legal persons.</p> <p>Information on corporations and their beneficial ownership and control structure might not always be adequate, accurate and current.</p>

## 5.2. Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)

### 5.2.1. Description and Analysis

Legal Framework:

614. There are no specific laws regarding legal arrangements such as trusts (whether foreign or domestic) in Palau; however, trusts are recognized as a type of corporation in accordance with the Corporation Regulations (Section 2.10). The Registrar of Corporations may grant charters of incorporation to nonprofit corporations that among others can be trusts. There are a few family trusts in Palau; these trusts in general hold the titles to land for a family.

615. Trustees or managers of unit trusts are covered as “cash dealers” or “OTC exchange dealers” in the MLPCA, Section 3(e)(4), whereby Section 3(w) MLPCA defines “unit trust” as any arrangement made for the purpose or having the effect of providing, for a person having funds available for investment, facilities for the participation by the person as a beneficiary under a trust, in any profits or income arising from the acquisition, holding, management, or disposal of any property pursuant to the trust.

616. Trusts, being nonprofit corporations, do not have to apply for a license from the FIB, nor obtain a business license from the DRT.

Measures to Prevent Unlawful Use of Legal Arrangements (c. 34.1):

617. Since trusts and other legal arrangements are considered corporation, and more specifically a nonprofit corporation, similar requirements apply as for corporations as described above under Recommendation 33. There are no specific obligations regarding obtaining information on the



ultimate beneficial owners of the corporation, nor does the law provide for any measures on ensuring transparency or preventing unlawful use of legal persons.

618. As for all nonprofit corporations, for trusts the initial filing of paperwork with the Registrar of Corporations to register a nonprofit corporation that is a trust includes a statement of purposes and objectives of the corporation, and the number, names, citizenship, and residence addresses of the initial officers and directors. The annual statement filed with the Registrar of Corporations contains the identity of persons who own, control, and direct individual corporations.

619. The Registrar does not conduct any examinations or other checks to determine if the data given on the registration form is accurate. Each nonprofit corporation must file an annual statement. The Registrar will check if the annual statement is filed, but not if it is accurate. The Registrar indicated that his office does not have the resources nor a legal reason to check if the information filed is correct.

Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2):

620. As described above under c. 33.2, all competent authorities, both local and foreign are able to view the publicly available records at the Registrar of Corporations.

Additional Element—Access to Information on Beneficial Owners of Legal Arrangements by Financial Institutions)(c. 34.3):

621. The public can request from the Registrar of Corporations copies of a corporation's articles of incorporation, bylaws, stock affidavits, and the certificate of status.

Effectiveness:

622. Information on trusts (nonprofit corporations) is easily accessible for both government agencies and the public in Palau. However, the information might not always be adequate, accurate or current as changes are only reported to the Registrar when filing the annual statement; and there is no check by the Registrar if the information is accurate.

### **5.2.2. Recommendations and Comments**

- There should be measures preventing the unlawful use of legal arrangements.
- There should be measures and mechanisms to ensure that information on the beneficial owners and control structure of trusts is available in an adequate and accurate manner.
- The Registrar of Corporations should implement measures to ensure that the information on trusts is adequate, accurate and current.

### **5.2.3. Compliance with Recommendations 34**

	Rating	Summary of factors underlying rating
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<b>R.34</b>	<b>PC</b>	Besides the basic registration requirements, there are no additional obligations regarding obtaining information on the ultimate beneficial owners and control structure of trusts, nor does the law provide for any measures on ensuring transparency or preventing unlawful use of legal arrangements.  Information on trusts might not always be adequate, accurate and current.
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### **5.3. Non-Profit Organizations (SR.VIII)**

#### **5.3.1. Description and Analysis**

Legal Framework:

623. The NPO sector is characterized by a bulk of small, locally-based and locally-operating NPOs with a few large, internationally-recognized NPOs such as the Red Cross and the Nature Conservancy.

624. The Registrar of Corporations provided the assessors with a comprehensive list of NPOs registered in Palau. There are currently 156 NPOs operating in Palau. They cover the arts, cultural and ethnic groups, community development, education, environment, legal aid, religious groups, professional associations, social welfare, sports, tourism, and women's groups.

625. The MLPCA does not include NPOs under its list of designated entities and, therefore, the latter is not directly subject to any of the AML requirements under the MLPCA. However, three other Acts do have requirements in relation to NPO operations in Palau, namely, the Corporations Act, the CTA, and the Tax Code.

626. Furthermore, NPOs are subject indirectly to AML requirements through foreign banks applying enhanced CDD to NPO customers and the usual STR and CTR reporting requirements.

627. The Corporations Act and associated Corporation Regulations govern the registration and operation of NPOs. Section 2.10 of the Corporation Regulations defines NPOs as a corporation, association, club, society, trust, league, or other such organization not organized for profit and any other organizations considered to be nonprofit for the purposes of the Foreign Investment Act.

628. Under Tax Code, Title 40 PNC 1002(w), donations to certain categories of NPOs are tax deductible to a maximum of 10 percent of taxable income. These include NPOs that are (1) educational, (2) scientific, (3) religious, (4) promotion of sports, (5) welfare of elderly, (6) protection of animals, or (7) charitable.

629. The favorable taxation treatment provides a strong incentive for NPOs in Palau to register and obtain the Certificate of NPO from the Registrar of Corporations.

630. More specific requirements in relation to ML and FT are in Section 25 of the CTA which refers specifically to the prevention of terrorism financing through NPOs. It requires that no legal entity should be granted charitable or NPO status if there are reasonable grounds to believe that any assets may be diverted to a terrorist or terrorist organization.

631. Section 25 further requires NPOs to submit STRs to the FIU and OAG if there is any suspicion of ML and FT. Any donations above \$10,000 must also be reported as CTRs. It is not clear whether the reference to reporting to the OAG was based on the previous situation of the FIU being based at the OAG.

632. There are penalties attached to violations including a fine of no more than \$10,000; temporary ban on the activities of the organization for a maximum of two years; and dissolution of the NPO.

633. The laws relating to NPOs are not sufficiently coordinated. STR, CTR, and record-keeping obligations are specified under the CTA but not in the MLPCA, even though the scope of STR reporting and record keeping in the CTA includes money laundering. NPOs are required to submit CTRs and STRs to the OAG and the FIU.

Review of Adequacy of Laws & Regulations of NPOs (c. VIII.1):

634. Palau has not undertaken a review of the relevant laws affecting NPOs nor of the sector in general. Palau advised that it does not have the resources to review both comprehensively and periodically the NPO sector.

635. All NPOs are required, and with a few exceptions, to submit annual reports, although not always on time. Palau does have good information on the activities of its NPOs, but it has not undertaken a desk review of this information on hand.

Outreach to the NPO Sector to Protect it from Terrorist Financing Abuse (c. VIII.2):

636. The Attorney General advised that there are no known cases of NPO abuse, be it fraud, false solicitation, or others.

637. Palau advised that its Registrar of Corporations and the OAG do not have the resources to undertake outreach to the NPO sector. However, there is a plan to undertake outreach to the NPO sector to advise of their STR and CTR reporting obligations.

Supervision or Monitoring of NPOs that Account for Significant Share of the Sector's Resources or International Activities (c. VIII.3):

638. There is no supervision and monitoring of NPOs except for the requirement for NPOs to meet their annual reporting obligations. There has been no attempt, given the resourcing issue raised, to focus on NPOs that are internationally connected or account for a significant percentage of the financial resources of the sector.

639. The DRT does not undertake audits nor reviews of the actual NPOs themselves. It only reviews and audits taxpayers claiming taxation deductions.

Information maintained by NPOs and availability to the public thereof (c. VIII.3.1):

640. The initial filing of paperwork with the Registrar of Corporations to register an NPO includes a statement of purposes and objectives of each individual NPO. The annual statement filed with the

Registrar of Corporations contains the identity of persons who own, control, and direct individual NPOs and a brief statement of expenses and revenue.

641. Both categories of information are available to the public upon a written request to the Registrar of Corporations and payment of \$20 and \$1 for every page. However, the list of registered NPOs is not available to the public.

Measures in place to sanction violations of oversight rules by NPOs (c. VIII.3.2):

642. There are existing provisions under the CTA and Corporations Act. The CTA in Section 25 can impose some minor penalties for violations with the most severe penalty being a temporary ban on the activities of the organization for a maximum of two years or dissolution of the NPO.

643. Under Section 124 of the Corporations Act, the Registrar of Corporations can order the production of papers, accounts, and records. Refusal is punishable by a fine and in the case of an individual, imprisonment of up to 90 days.

644. The Registrar of Corporations has revoked the registration of some NPOs because of a failure to provide annual statements.

Licensing or registration of NPOs and availability of this information (c. VIII.3.3):

645. Palau requires any entity that wants to operate as an NPO to register with the Registrar of Corporations pursuant to Sections 1.3, 2.10, and 21.11 of the Corporation Regulations. There is a filing fee for registration of \$250.

646. There is no fit and proper test requirement for NPO registration. The minimum requirements for registration include the charter for the NPO; at least three persons resident in Palau; location and mailing address; purpose of NPO; period of registration; details of directors and officers; clear statement of nonprofit objective; and that no assets nor revenue shall be distributed to members except for actual services rendered.

647. There is no requirement for an annual meeting and audited statements. There is only a requirement under Section 5.5 of the Corporation Regulation for NPOs to submit an annual report of activities including a financial statement. However, the larger NPOs are known to have annual meetings and for officers to be elected.

648. Records of NPOs registered at the Registrar of Corporations are freely and readily available to other government agencies, and also to the public.

Maintenance of records by NPOs, and availability to appropriate authorities (c. VIII. 3.4):

649. Section 2.21 of the Corporation Regulations requires every corporation to keep correct and complete books. However, there is no specification that these records must be kept for at least five years.

650. Section 25 of the CTA requires NPOs to maintain records of donations of \$5,000 and above for a period of three years and that they be made available to the FIU on request. This requirement is less than the five years specified by FATF.

Measures to ensure effective investigation and gathering of information (c. VIII.4):

651. There are no additional measures taken in respect of NPOs. There is the MLWG to coordinate broader implementation concerns and existing law enforcement arrangements with the BPS and the OAG.

Domestic cooperation, coordination and information sharing on NPOs (c. VIII.4.1):

652. The Registrar of Corporations provides an updated list of NPOs registered in Palau to the DRT on a monthly basis. This report is copied to the Bureau of Immigration, Division of Labour, FIB, Office of Planning and Statistics, and the Office of the President.

Access to information on administration and management of NPOs during investigations (c. VIII.4.2) and Sharing of information, preventative actions and investigative expertise and capability, with respect to NPOs suspected of being exploited for terrorist financing purposes (c. VIII.4.3):

653. The information is easily accessible from the Registrar of Corporations. Palau would draw on its existing arrangements and resources in any investigation, particularly CID staff.

Responding to international requests regarding NPOs—points of contact and procedures (c. VIII.5):

654. The Attorney General and the OAG is the primary operational office for mutual legal assistance. It is also the same office as the Registrar of Corporations as the Attorney General performs both functions. It also works closely with the CID and until recently, the FIU was also housed in the OAG. The cross-over in various government functions could facilitate a speedy response.

Effectiveness:

655. Palau has a satisfactory registration process for NPOs and adequate information on hand to identify potential abuse. There has also been no active monitoring, even on a spot checking basis, of actual activities undertaken by NPOs. This lack of oversight could expose the sector to potential abuse, granted that Palau is a small place and any unusual NPO activities would be noticed by the community.

656. There is no designated agency responsible for NPO matters in relation to AML/CFT although it is implied that the FIU is the primary agency.

### **5.3.2. Recommendations and Comments**

- Undertake a review of laws affecting NPOs to ensure relevancy and consistency.
- Review the information available on NPOs at the Registrar of Corporations to identify NPOs with international funding or which account for a significant size of the sector.

- Commence an audit or spot checking program targeted at higher-risk NPOs identified from the review.
- Amend the requirement for record keeping to at least five years after the completion of any financial transaction, including records of donors and expenditure.
- Designate an agency as the responsible agency for NPOs, not only in respect to registration but for broader AML/CFT matters including as a coordination point for information sharing.

**5.3.3. Compliance with Special Recommendation VIII**

	Rating	Summary of factors underlying rating
SR.VIII	PC	No review of laws nor the NPO sector. No fit and proper test for NPO registration. No audited statements required. No active monitoring nor supervision. No outreach nor awareness raising. No designated contact point.

## **6. NATIONAL AND INTERNATIONAL CO-OPERATION**

### **6.1. National Cooperation and Coordination (R.31)**

#### **6.1.1. Description and Analysis**

##### **Legal Framework:**

657. The MLWG was created by Presidential Order No. 218 in November 2003 to provide input into the President's AML/CFT policies. It has as duties and functions to coordinate Palau's overall fight against money laundering and the financing of terrorism; to provide for the timely exchange of information relating to suspected money laundering or financing of terrorism activities and related indicators of such activities; to facilitate opportunities for sharing limited resources; to enhance communication and coordination of efforts to combat money laundering and the financing of terrorism; to develop joint targeting strategies to concentrate the Republic's efforts at combating money laundering and the financing of terrorism; to develop and enhance common law enforcement and regulatory training activities; and to jointly profile or identify common suspects.

658. The membership consists of the Chairman of the FIC, the Attorney General or his designee; the Executive Director of the FIC; the Chief of the Bureau of Revenue, Customs & Tax - Customs Division; the Director of the Bureau of Immigration or his designee; the Director of the Bureau of Public Safety or his designee; and a representative from the Office of the President.

659. The MLWG's agenda is being led by issues at hand. It has been meeting too irregularly to have played a significant role in the advancement of Palau's AML/CFT efforts.

##### **Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):**

660. The FIU functional existence depends on the support of its host agency, previously the OAG and now the FIC. It also depends on the CID to undertake the investigative work in response to STR referrals. It is closely and critically intertwined with other agencies' resources to achieve its outputs. Overall, the FIU and its partners have worked well, as demonstrated by the high percentage of STRs referrals actioned by law enforcement.

661. Although the various laws (MLPCA, CCDA) do not prevent agencies from cooperating and coordinating, there are no specific mechanisms in place for operational cooperation and coordination. However, because Palau is a small community, informal consultations between authorities take place on an ad hoc basis.

##### **Additional Element - Mechanisms for Consultation Between Competent Authorities and Regulated Institutions (c. 31.2):**

662. The authorities have consulted the banks regarding the amendments of the FIA. Cooperation between the authorities and the banks is ad hoc. The nonbank institutions that fall under the MLPCA are not aware of their legal requirements and have never been contacted by the authorities.

##### **Statistics (applying R.32):**

663. There are no statistics with respect to domestic cooperation.

#### **6.1.2. Recommendations and Comments**

- Ensure that the MLWG meets on a regular basis to ensure further policy cooperation.
- Set up mechanisms to ensure structured cooperation between the FIU, CID, and Customs.

#### **6.1.3. Compliance with Recommendation 31**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.31</b>	<b>LC</b>	The MLWG is not functioning in the most effective way.

### **6.2. The Conventions and UN Special Resolutions (R.35 & SR.I)**

#### **6.2.1. Description and Analysis**

Legal Framework:

Ratification of AML-Related UN Conventions (c. 35.1) :

664. Neither the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) nor the United Nations Convention Against Transnational Organized Crime (the Palermo Convention) have been signed or ratified by Palau, whereby the authorities stated that the ratification process of the Palermo Convention was pending at the OEK at the time of the assessment.

Ratification of CFT Related UN Conventions (c. I.1):

665. The financing of terrorism is criminalized in Section 23 - 26 of the CTA. Palau has signed and ratified the UN Convention for the Suppression of the Financing of Terrorism as well as 10 out of the other 12 international conventions and protocols relating to the fight against terrorism. While Palau has signed the International Convention for the Suppression of Acts of Nuclear Terrorism, it has neither signed nor ratified the Convention on the Physical Protection of Nuclear Material.

Implementation of Vienna Convention (Sections 3-11, 15, 17 & 19, c. 35.1):

666. Palau has implemented most of the Vienna Convention's provisions as applicable to the FATF Recommendations. However, confiscation of proceeds derived from drug offenses and instrumentalities of such a crime may not be confiscated and there are no measures in place to enforce foreign confiscation orders relating to property of corresponding value of such property. Palau has no arrangements for coordinating seizure and confiscation actions with other countries. Furthermore, Palau has not considered the possibility of transferring drug-related money laundering prosecutions to another jurisdiction if a transfer is in the interest of justice.

Implementation of SFT Convention (Sections 2-18, c. 35.1 & c. I.1):



667. Palau's legislation meets most of the requirements of the Suppression of the Financing of Terrorism Convention. However, no measures are available to identify, trace, and freeze property related to terrorism financing.

Implementation of Palermo Convention (Sections 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c. 35.1):

668. Palau has implemented some parts of the Palermo Convention's provisions as applicable to the FATF Recommendations. However, further improvements in the laws will be required to fully implement all provisions of the Convention. In particular, Palauan law does not criminalize the act/attempt to participate in an organized criminal group and a number of other serious crimes listed in the international standard are not predicate offenses for money laundering. As Palau requires dual criminality for the provision of mutual legal assistance in criminal matters, the limited number of predicate offenses for money laundering may seriously impact the authority's ability to provide the widest measures of mutual legal assistance in matters involving confiscation, freezing or seizing of property or the extradition of individuals.

669. Even in cases where the dual criminality requirement is met, Palauan law does not allow for the confiscation of proceeds derived from or of instrumentalities used or intended to be used for the commission of predicate offenses.

670. The AML/CFT regimes for banks and nonbank financial institutions provides for some CDD requirements, record-keeping requirements as well as STR-reporting requirements. Although a supervisor has been designated for some institutions, it has not done any inspections. The law setting up the new regime still is deficient in several areas and, as some aspects of the law are new, the regime has not been implemented at the time of the on-site mission.

Implementation of UNSCRs relating to Prevention and Suppression of FT (c. I.2)

671. As discussed in great detail under Special Recommendation III, Palau's implementation of UNSCRs 1267 and 1373 is insufficient.

Additional Element—Ratification or Implementation of Other relevant international conventions (c. 35.2):

672. The authorities could not provide the assessors with the required information to establish whether Palau has signed or ratified any other relevant international conventions.

#### **6.2.2. Recommendations and Comments**

- Palau should sign and ratify the Palermo and Vienna Conventions.
- Palau should ratify the International Convention for the Suppression of Acts of Nuclear Terrorism and sign and ratify the Convention on the Physical Protection of Nuclear Material.
- It should be ensured that all provisions of the Palermo and Vienna Conventions are fully implemented.

- The CTA should be amended to allow for the identification, tracing, and freezing of property relating to terrorism financing.
- Fully implement UNSCRs 1267 and 1373.

### 6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
<b>R.35</b>	<b>PC</b>	Palau has not signed and ratified the Palermo and Vienna Conventions. Both the Palermo and Vienna Conventions are not fully implemented.
<b>SR.I</b>	<b>PC</b>	Palauan law does not allow for the identification, tracing, and freezing of property relating to terrorism financing. Implementation of UNSCR 1267 and UNSCR 1373 is incomplete.

## 6.3. Mutual Legal Assistance (R.36-38, SR.V)

### 6.3.1. Description and Analysis

Legal Framework:

673. Palau's Mutual Legal Assistance in Criminal Matters Act of 2001 (MLA Act) came into force on June 19, 2001 and regulates Palau's cooperation with foreign countries in criminal investigations and proceedings, including the obtaining of evidence, the freezing and confiscation of assets, and the enforcement of foreign court orders.

Widest Possible Range of Mutual Assistance (c. 36.1):

674. Pursuant to Section 5 of the MLA Act, mutual legal assistance may be requested and granted by Palau in relation to investigations or proceedings of a serious offense. A serious offense, as defined by Section 4 of the MLA Act, includes (1) any criminal offense under Palauan law punishable by imprisonment for more than one year or (2) an act or omission constituting an offense against a law of a foreign state which, had it occurred in Palau, would have constituted a criminal offense punishable by imprisonment for more than one year. With respect to extradition requests, however, Section 4 Extradition Act provides that extradition may be granted only for offenses that are criminal punishable with imprisonment for over one year in both the requesting country and Palau.

675. The Attorney General, through the Ministry of State, may request foreign countries to provide mutual legal assistance with respect to serious offenses and indicating the nature of the request and the nature of the criminal matter. The Attorney General stated that in practice, he would inquire through informal channels what requirements are in place in another country and what information should be included in a request before actually sending the request through the Ministry of State.

676. Requests received from foreign countries would be forwarded from the Minister of State to the Attorney General. The Minister of State would also inform the President of receipt of the request.

Pursuant to Section 5 (b) MLA Act, the Attorney General may grant, refuse, or postpone the provision of mutual legal assistance.

677. Pursuant to Section 5 (b)(2) MLA Act, a request may be refused if granting it would likely prejudice the sovereignty, security or other essential public interest of Palau. The Attorney General stated that no request has ever been refused on any grounds.

678. If a request would immediately be likely to prejudice the conduct of an investigation or proceeding in Palau, the Attorney General may, upon consultation with the competent authority in the requesting state, postpone grant of the request based on Section 5 (b)(3) MLA Act. The Attorney General stated that in practice, the grant of a request has never been postponed based on this provision. In all other circumstances, the Attorney General may grant the request, in whole or in part, and on such terms and conditions as he sees fit. In any case, no request may be granted unless the requesting state has provided assurance that it would cover all costs associated with the request.

679. In addition to the Attorney General, pursuant to Section 5 (c) MLA Act, the President or his designee may refuse any request from a country that does not afford substantially reciprocal privileges to Palau or upon determination that refusal of such a request is in the public interest of the Palau public. The Attorney General explained that in practice, this provision could be invoked with respect to countries that in the past have refused to grant mutual legal assistance to Palau without any reasonable grounds or justification.

680. Sections 9 and 13 MLA Act specify the kind of assistance Palau may provide to foreign countries.

681. Section 9 MLA Act stipulates that the Supreme Court may issue a search warrant or evidence-gathering order, provided the request is with regard to a serious offense against the laws of the foreign state as outlined above and the country can show that there is probable cause to believe that the evidence sought may be found in a building, receptacle, or place in Palau or is held by a person located in Palau. The provision further stipulates that a statement by the requesting state that the conduct investigated relates to a serious offense under its laws is prima facie evidence of that fact. Unlike in the case of extradition requests, no copy of the offense based on which the request is made has to be provided.

682. An evidence-gathering order has to specify the manner in which the evidence is to be obtained and may require any person named in the request to (1) make a record from data or make a copy of a record (2) attend the court to testify or (3) produce anything, including documents or copies thereof. Even though this has never been applied in practice, according to the Attorney General, evidence-gathering orders would also extend to financial records held at financial institutions or other natural or legal persons.

683. The order may further include such terms and conditions as the Supreme Court considers desirable, including those relating to the interest of persons named in the order or any third party. Persons named in the evidence-gathering order may refuse to answer a question or to produce a document or real evidence on the grounds of Palauan law, based on a privilege recognized by a law in the requesting state, or if a law in the requesting state would render the answering of that question or the production of that document or real evidence an offense. In the case of refusal based on a foreign

state's law, the Supreme Court reports the matter to the Attorney General who in turn requests the foreign state concerned to provide a written statement on whether the grounds for refusal are indeed well founded under the law of that state. If a person refuses to comply with an evidence-gathering order based on grounds other than those mentioned above, or continues to refuse to comply after a foreign country has stated that the refusal is not well-founded, he or she commits a contempt of court and may be punished accordingly.

684. Search warrants may be issued upon request of a foreign state and in line with Palauan law. Documents or other evidence seized and ordered may be sent to a foreign state after the Attorney General is satisfied that the foreign state has agreed to comply with any terms and conditions imposed. The Supreme Court may adopt, recognize and enforce foreign court orders that are certified or were issued under seal, and which shall have a rebuttable presumption of validity.

685. Section 13 MLA Act provides that upon request by a foreign state, the Attorney General may apply to the Supreme Court for a restraining order against property located in Palau provided that:

- The property is not clan, lineage, or family land;
- The property does not involve any interest held by a legitimate bona fide purchaser or owner without notice of an illegal interest in the property;
- Criminal proceedings have commenced in the requesting state with respect to a serious offense; and
- There is probable cause to believe that the property relates to that offense or belongs to the defendant or his conspirators.

686. Section 13 (b) MLA Act further stipulates that the Court may issue such an order as if the serious offense that is the subject of the order had been committed in Palau. Therefore, the general provisions of the MLPCA, as discussed in section 2.3.1., also apply with respect to requests by a foreign country to identify, freeze, seize, and confiscate assets laundered or intended to be laundered, proceeds of money laundering and assets used for or intended to be used for financing of terrorism as well as the instrumentalities of such offenses and assets of corresponding value.

687. Pursuant to Section 14 MLA Act, the Attorney General may apply to the Supreme Court for enforcement of a foreign confiscation order, whereby "foreign confiscation order" is defined as "an order made by a court of a foreign State, for the confiscation or forfeiture of property in connection with or recovery of the proceeds of a serious offense." The Attorney General confirmed that for enforcement of foreign confiscation orders, no conviction would be required and that civil forfeiture orders could be executed in Palau, even though Palauan law does not allow for civil forfeiture in money laundering cases.

688. Section 8 (a) of the MLA Act clearly lists the information that should be contained in the request for assistance. However, Section 8 (b) provides that mutual legal assistance requests may be granted, if necessary after consultation, notwithstanding the fact that the request does not comply with subsection (a). The Attorney General stated that in practice, countries would inquire through informal channels what information should be contained in a mutual legal assistance request before actually

sending a request. In response to such requests, countries would be provided with Section 8 (a) MLA Act.

689. Overall Palau's framework for the provision of mutual legal assistance enables the authorities to take any measure on behalf of another country that could be taken with respect to a domestic case. However, this also entails that all shortcomings highlighted in section 2.3 of this report may directly impact the authorities' ability to provide mutual legal assistance to other countries as outlined in great detail in the analysis sections of Recommendation 38 and Special Recommendation V below. Furthermore, due to the requirement of dual criminality, the shortcomings of the money laundering and financing of terrorism offenses outlined in sections 2.1 and 2.2 of this report may limit Palau's ability to provide mutual legal assistance, for example, in cases involving any predicate offense not covered by the MLPCA.

Provision of Assistance in Timely, Constructive, and Effective Manner (c. 36.1.1):

690. While the MLA Act does not provide for clear timeframes in which MLA requests have to be handled, the authorities stated that in practice mutual legal assistance requests are being dealt with within about a week. No documents were provided to the assessors to prove this assertion.

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):

691. As outlined above, pursuant to Section 5 of the MLA Act, the Attorney General may refuse a request if granting it would be likely to prejudice the sovereignty, security, or other essential public interest of Palau. He may further postpone a request if its grant would immediately be likely to prejudice the conduct of an investigation or proceeding in Palau. In all other circumstances, the Attorney General may grant the request, in whole or in part, and on such terms and conditions as he sees fit. Palau has never refused or postponed the granting of any mutual legal assistance requests.

692. Furthermore, the President or his designee may refuse any request from a country that does not afford substantially reciprocal privileges to Palau or upon determination that refusal of such a request is in the public interest of the Palau public. No request for mutual legal assistance has ever been refused by the President based on this provision.

693. Any request for mutual legal assistance has to relate to the commission of a serious offense and in all cases, the requesting state has to provide written assurance that it will cover all costs associated with the request. According to the Attorney General, it is not required that the requesting state has actually commenced judicial proceedings. Mutual legal assistance may also be granted before any case has been filed or any indictments been made.

694. Overall, Palau's law does not unduly or unreasonably restrict the provision of mutual legal assistance. The provisions of Section 5 MLA Act leave the Attorney General and the President with some discretion to deny mutual legal assistance requests; however, in practice those restrictions seem to be interpreted narrowly and neither of the provisions has ever been invoked to refuse a request.

Efficiency of Processes (c. 36.3):

695. There are no clear and efficient processes in place for the execution of mutual legal assistance requests in a timely way and without undue delay. The authorities stated that requests received would be dealt with immediately upon receipt and that a response would be sent back to the requesting

country within a week. However, due to the fact that only one request has ever been received, no documentation could be provided to show that in practice, mutual legal assistance requests are being dealt with efficiently and without undue delay.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):

696. The MLA Act and Section 5 in particular do not indicate that a request may be refused on the sole ground that the offense is also considered to involve fiscal matters. However, whereas the Extradition Act expressly stipulates that an offense is an extraditable offense even if it relates to taxes, customs, or other revenue matters, no such express provision is included in the MLA Act. If extradition may be granted for offenses involving fiscal matters, it would appear that other mutual legal assistance would be, too.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):

697. As discussed under Recommendation 16 of this report, attorneys are the only category of DNFbps that provide services as listed in the international standards. However, since attorneys are not covered by the MLPCA, they may invoke professional secrecy to prevent the provision of information for mutual legal assistance purposes.

Availability of Powers of Competent Authorities (applying R.28, c. 36.6):

698. It is not explicitly mentioned nor prohibited if the powers of the FIU and OAG to apply to the Supreme Court for an order allowing the FIU or the OAG to examine and obtain records of financial institutions (Section 13 MLPCA) or of law enforcement agencies responsible for the detection and suppression of money laundering offenses to seize property connected with the offense under investigation (Section 27 MLPCA), are available for use in response to requests for mutual legal assistance. However, the authorities indicated that they will request records from financial institutions or take witness statements for the purpose of mutual legal assistance.

Avoiding Conflicts of Jurisdiction (c. 36.7):

699. Palau has not considered devising and applying mechanisms for determining the best venue for prosecutions of defendants in cases that are subject to prosecutions in more than one country.

Additional Element—Availability of Powers of Competent Authorities Required under R28 (c. 36.8):

700. It is not explicitly mentioned nor prohibited if the powers of the FIU and OAG to apply to the Supreme Court for an order allowing the FIU or the OAG to examine and obtain records of financial institutions (Section 13 MLPCA) or of law enforcement agencies responsible for the detection and suppression of money laundering offenses to seize property connected with the offense under investigation (Section 27 MLPCA), are available for use in response to requests for mutual legal assistance. However, the authorities indicated that they will request a court order to deal with requests from foreign law enforcement authorities for records from financial institutions or witness statements.

International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1):

701. Section 15 CTA specifically provides that the Attorney General may make or grant requests for mutual legal assistance with respect to any investigation or proceeding relating to terrorism, or a terrorist organization. It is further stipulated that mutual legal assistance provided in accordance with Section 15 shall be carried out pursuant to and in accordance with Chapter 13 (a) of the MLPCA, the MLA Act or any MOU entered into between the competent authorities of Palau and the foreign state.

702. The MLA Act does not differentiate between requests regarding money laundering, predicate offenses, or terrorist offenses. As the scope of the Act extends to all “serious offenses” as defined in Palau’s criminal laws, the provisions described in 36.1-6 therefore also apply with respect to terrorist crimes and terrorist financing.

703. The CTA does not provide the OAG or the CID with any specific powers to compel production of, or search persons or premises for transaction records, identification data, account files, business correspondence, and other records held or maintained by financial institutions and other businesses or persons for investigation into the financing of terrorism.

Additional Element under SR V (applying c. 36.7 & 36.8 in R.36, c. V.6):

704. Section 16 CTA provides that the Minister of Justice, the Attorney General, the FIU, and other law enforcement authorities and designated officers may and are encouraged to share and disclose intelligence information relating to terrorism, terrorist organizations, transnational organized crime, illicit drugs, money laundering, illegal arms trafficking, and illegal movement of nuclear, chemical, biological, and other potentially deadly materials, and to provide early warning of such matters to the competent law enforcement authorities of foreign states that are members of the Pacific Islands Forum, that are State Parties to the international terrorism convention, the United States pursuant to the Compact of Free Association, and any UN member state.

705. Restrictions imposed by the granting Palauan agency on the use or disclosure of the information provided are binding on the receiving agency. Where a request from a foreign state requires that confidentiality, such requirement shall be observed except to the extent necessary to give effect to the request.

706. Palau has not considered devising and applying mechanisms for determining the best venue for prosecutions of defendants in terrorist or terrorist financing cases that are subject to prosecutions in more than one country.

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

707. Pursuant to Section 9 MLA Act, the Supreme Court may render mutual legal assistance if a request relates to a serious offense against the laws of the foreign state, whereby a statement by the requesting state that the conduct investigated relates to a serious offense under its laws is prima facie evidence of that fact. The MLA Act defines “serious offense” as a criminal offense under Palau’s laws punishable with imprisonment of more than one year and any act or omission constituting an offense against a law of a foreign state which, had it occurred in Palau, would have constituted a criminal offense punishable by imprisonment for more than one year.

708. It does not appear that absent dual criminality, Palau may lawfully provide mutual legal assistance, even with respect to noncoercive measures.

International Cooperation under SR V (applying c. 37.1-37.2 in R. 37, c. V.2):

709. Dual criminality is required in all cases, including terrorism and terrorist financing. See write up under Recommendation 37 above.

Timeliness to Requests for Provisional Measures including Confiscation for Property of Corresponding Value (c. 38.1 and 38.2.):

*Enforcement of foreign confiscation or restraining orders in Palau:*

710. Section 14 of the MLA Act provides for the enforcement of foreign confiscation or restraining orders. “Foreign Confiscation Order” is defined as a foreign court order for the confiscation or forfeiture of property in connection with or recovery of the proceeds of a serious offense and “Foreign Restraint Order” is a foreign court order relating to a serious offense and restraining a person or persons from dealing with property. Pursuant to Article 14, the Attorney General, upon receipt of a foreign confiscation or restraining order, may apply to the Supreme Court for entry and enforcement of the order. The Supreme Court has to enforce the order if it can be established that:

- the order is in force in the foreign state at the time of entry and is not subject to appeal; and
- the person subject of the order did not appear in the confiscation proceedings in the foreign state if the person was given sufficient notice of the proceedings or if the person had absconded or died before commencement of the proceedings.

711. A statement contained in the foreign request that the above listed elements are met constitutes prima facie evidence of those facts.

712. Where a foreign restraining order or foreign confiscation order is entered for enforcement, a copy of any amendments made to the order in the foreign state has to be entered and enforced in the same way as the order itself to be effective in Palau.

713. The Supreme Court, upon application by the Attorney General, rescinds entered confiscation orders if it appears that the order has been satisfied or has ceased to have effect, and rescinds foreign restraining orders if it appears that the order has ceased to have effect. The authorities stated that it would be up to the person affected to bring it to the attention of the court that a confiscation order has been satisfied or has ceased to have effect.

714. As discussed under criterion 36.2, foreign confiscation orders may be enforced in Palau, whether or not they are conviction based.

*Freezing, seizing or confiscation orders issued by the Palauan Supreme Court based on request by a foreign country:*



715. Pursuant to Section 13 MLA Act, upon request by a foreign state the Attorney General may apply to the Supreme Court for a restraining order against property located in Palau, provided that:

- The property is not clan, lineage, or family land;
- The property does not involve any interest held by a legitimate bona fide purchaser or owner without notice of an illegal interest in the property;
- Criminal proceedings have commenced in the requesting state with respect to a serious offense; and
- There is probable cause to believe that the property relates to that offense or belongs to the defendant or his conspirators.

716. Section 13 (b) MLA Act further stipulates that the Court may issue such an order as if the serious offense that is the subject of the order had been committed in Palau. Therefore, the general provisions of the MLPCA as discussed in section 2.3.1 also apply with respect to requests by a foreign country to identify, freeze, seize, and confiscate property laundered, proceeds from instrumentalities used in or intended for use in the commission of any money laundering, terrorism financing, or any predicate offense and assets of corresponding value.

*Foreign Identification Requests:*

717. Pursuant to Article 15 of the MLA Act, upon request by a foreign state, the Attorney General may authorize the giving of assistance in locating property believed to be the proceeds of crime through application of the MLPCA. The Attorney General stated that in practice, this would mean that all powers pursuant to MLPCA may also be used for and are applicable with respect to mutual legal assistance. The measures discussed under criterion 3.4 of Recommendation 3 would, therefore, also apply with respect to foreign requests to trace or identify property.

718. Section 33 Extradition Act further provides that where an extradition country requests assistance with the location or seizure of property suspected to be evidence or tainted and related to an extraditable offense, the MLPCA shall apply, provided that the Minister of Justice or his designee has authorized the giving of assistance to the foreign state under the MLA Act.

*Coordination of Seizure and Confiscation Actions (c. 38.3):*

719. Apart from one MOU for Mutual Legal Assistance with the United States, which is limited in scope to a specific case, Palau has not entered into any bilateral or multilateral arrangements with other countries to coordinate seizing and confiscation actions.

*International Cooperation under SR V (applying c. 38.1-38.3 in R. 38, c. V.3):*

720. The definitions of “foreign restraint order” and “foreign confiscation order” relate to all serious offense and, therefore, would include any terrorist or terrorist financing offenses.

721. In addition, foreign identification requests may be granted if the request relates to a serious offense pursuant to Article 13 MLA Act or to an extraditable offense pursuant to Article 33 Extradition Act.

722. With respect to requests for freezing, seizing, or confiscating proceeds of instrumentalities used in or intended to be used in the commission of any terrorism financing predicate offense, the provisions discussed under criterion 3.1 of Recommendation 3 apply pursuant to Section 13 MLA Act.

Asset Forfeiture Fund (c. 38.4):

723. Section 19 of the MLA Act provides that any proceeds of drug-related crime which have been confiscated in a foreign state pursuant to a request by Palau or that were confiscated in Palau pursuant to a foreign restraining or confiscation order under Section 14 (a) and subject to any sharing agreement, shall be deposited in designated accounts. The accounts benefit the Palau National Olympic Committee, the Drug Abuse Prevention and Control, and the Palau Retirement Fund.

724. Other than for drug-related crimes there is no designated asset forfeiture fund, but Section 36 of the MLPCA provides that confiscated property and proceeds shall accrue and be forfeit to the Republic of Palau, and be delivered to the general fund of the Republic after the auction sale of such property.

Sharing of Confiscated Assets (c. 38.5):

725. Section 16 of the MLA Act provides that the Attorney General may enter into asset-sharing agreements with the competent authority of a foreign state. The agreement may relate to proceeds of money laundering and other crimes and provide for sharing of assets realized in Palau based on a foreign request or those realized in a foreign state due to action taken by the Attorney General.

Additional Element (R 38) – Recognition of Foreign Orders for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6):

726. As discussed under criterion 36.2, foreign confiscation orders may be enforced in Palau, whether or not they are conviction based.

Additional Element under SR V (applying c. 38.4-38.6 in R. 38, c V.7):

727. Section 16 CTA only refers to proceeds of drug offenses and, therefore, does not extend to proceeds from terrorist or terrorist financing offenses. Pursuant to Section 14 MLA Act, the Attorney may enter into asset-sharing agreements with respect to confiscated proceeds of terrorist financing or terrorist offenses. As discussed under criterion 36.2, foreign confiscation orders may be enforced in Palau, whether or not they are conviction based.

Statistics (applying R.32):

728. Palau has received and granted one request for mutual legal assistance from the United States, involving the location and subsequent confiscation of funds. Palau has made one request for mutual legal assistance to New Zealand, involving the gathering of personal bank records.

### 6.3.2. Recommendations and Comments

- The Criminal Code should be amended to include all categories of predicate offenses as listed in the international standard so as to be able to provide the widest possible range of mutual legal assistance, both with respect to money laundering and terrorism financing.
- The MLPCA should be amended to allow for the confiscation of proceeds of, instrumentalities used or intended for use in the commission of a predicate offense for money laundering based on a request by a foreign country.
- The MLPCA should be amended to allow for the confiscation of property of corresponding value to property laundered, instrumentalities intended for use in the commission of a money laundering offense, as well as proceeds of and instrumentalities used in or intended for use in the commission of any predicate offense and based on a request by a foreign country.
- A clear and efficient process for the execution of mutual legal assistance requests in a timely way and without undue delay should be put in place.
- Palau should allow for the provision of mutual legal assistance even absent dual criminality if the request relates to noncoercive measures.
- Palau should consider devising and applying mechanisms for determining the best venue for prosecutions of defendants in cases that are subject to prosecutions in more than one country.
- Palau should consider whether it would be beneficial to enter into formal agreements with other countries to coordinate seizing and confiscation actions.
- The law should be amended to allow for the identification, tracing, and the freezing of property related to terrorism financing.
- All the DNFBPs should be covered by the MLPCA to allow for mutual legal assistance with respect to information held by these entities.

### 6.3.3. Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	PC	<p>Due to the dual criminality requirement, Palau's ability to provide mutual legal assistance may be limited in cases involving any of the predicate offenses not covered by the MLPCA.</p> <p>The law does not allow for the confiscation of property of corresponding value to property laundered, instrumentalities intended for use in the commission of a</p>

		<p>money laundering offense.</p> <p>The MLA Act does not provide for a clear and efficient process for the execution of mutual legal assistance requests in a timely way and without undue delay.</p> <p>Palau has not considered devising and applying mechanisms for determining the best venue for prosecution of defendants in cases that are subject to prosecutions in more than one country.</p> <p>Not all the DNFBPs are covered by the MLPCA and, therefore, mutual legal assistance may be avoided by invoking legal professional secrecy.</p>
<b>R.37</b>	<b>LC</b>	<p>Absent dual criminality, Palau may not provide mutual legal assistance even with respect to noncoercive measures.</p>
<b>R.38</b>	<b>PC</b>	<p>Due to the dual criminality requirement, Palau's ability to provide mutual legal assistance may be limited in cases involving any of the predicate offenses not covered by the MLPCA.</p> <p>The law does not allow for the confiscation of proceeds of, instrumentalities used or intended for use in the commission of a predicate offense for money laundering.</p> <p>The law does not allow for the confiscation of property of corresponding value to property laundered, instrumentalities intended for use in the commission of a money laundering offense, as well as proceeds of and instrumentalities used in or intended for use in the commission of any predicate offense.</p> <p>Apart from one MOU for Mutual Legal Assistance with the United States, which is limited in scope to a specific case, Palau has not entered into any bilateral or multilateral arrangements with other countries to coordinate seizing and confiscation actions.</p>
<b>SR.V</b>	<b>PC</b>	<p>No freezing measures are available for property related to terrorism financing.</p> <p>No measures are in place to identify or trace property relating to terrorism financing.</p> <p>Palau has not considered devising and applying mechanisms for determining the best venue for prosecutions of defendants in terrorist or terrorist financing cases that are subject to prosecutions in more than one country.</p>

#### **6.4. Extradition (R.37, 39, SR.V)**

##### **6.4.1. Description and Analysis**

###### **Legal Framework:**

729. Palau's Extradition and Transfer Act (Extradition Act) came into force on June 19, 2001 and provides for the extradition of persons to other countries as well as the seizure of any assets in connection with extraditions.

Dual Criminality Requirement for Extradition (c. 37.1. and c. 37.2.):

730. Pursuant to Section 5 of the Extradition Act, Palau may extradite individuals for an act or omission in the requesting country if the act or omission would constitute a criminal offense punishable with imprisonment for more than one year under the laws of both the requesting country and Palau. As discussed in section 6.2.5., the dual criminality requirement for extradition is, therefore, slightly stricter than for other forms of mutual legal assistance, as the Extradition Act requires that an offense is a criminal offense and punishable with imprisonment of more than one year in both the requesting and the requested country.

731. Section 5 (b) provides that in determining whether or not an offense is extraditable, terminology and categorization are not dispositive and that the totality of the acts or omissions alleged shall be considered in determining the constituent elements of the offense. In countries where there is no statutory penalty, the level of penalty that can be imposed for the commission of the offense shall be taken into account.

732. The authorities stated that to determine whether or not an offense is considered an extraditable offense, a copy of the foreign law defining the offense for which the extradition is sought would be requested.

Money Laundering as Extraditable Offense (c. 39.1):

733. Under Palauan law, the sanctions for money laundering are imprisonment of not more than one year and one day or of not more than 10 years for the aggravated offense. Provided that the act or omission is a criminal offense punishable with imprisonment of more than one year under the law of the requesting country, money laundering is, therefore, an extraditable offense pursuant to Section 5 of the Extradition Act.

734. However, Section 6 of the Extradition Act stipulates that extradition requests may not be granted if they relate to:

- The commission of a political offense;
- Conduct that is prosecuted due to race, religion, nationality, political opinion or affiliation, gender, or status;
- Offenses arising under a foreign state's military laws if the conduct is not criminalized in Palau
- An offense for which a person has already been convicted in Palau;
- An offense that is not prosecutable due to the statute of limitations, due to amnesty, immunity of the offender or any other reason under the requesting states' laws;
- Cases in which the offender has been acquitted, pardoned, or duly punished for the offense, either in Palau or the requesting state;

- Cases in which judgment was entered in the person's absence, and the requesting country's law does not entitle the person to raise any defenses upon his or her return;
- Cases in which prosecutions for the offense are pending in Palau;
- Offenses that were not committed in the requesting state and Palau has no jurisdiction over the offense;
- Offenses that were committed, wholly or partially, in Palau and the Attorney General confirms that prosecution will be instituted;
- Offenses punishable by death in the requesting state and no sufficient assurances are given that the death penalty will not be imposed;
- Cases in which the person will likely be tried by an illegitimate court;
- Cases in which the person is likely to be subjected to torture or cruel and inhumane treatment or punishment, including inhumane prison conditions; or
- If the requesting government is authoritarian in nature or nondemocratic in form.

735. In all cases, Section 9 of the Extradition Act provides that extradition requests may only be granted if all of the following conditions are met:

- The requesting country has issued an arrest warrant for the extraditable offense;
- The person named in the warrant is physically present or about to enter Palau in the foreseeable future;
- The requesting country is an extradition country;
- The requesting country has produced all supporting documents;
- None of the extradition objections listed above or any other laws would preclude the extradition; and
- No other valid and legally-justifiable cause exists to preclude surrender of that person.

*Procedures to extradite individuals charged with a money laundering offense:*

736. It is worth mentioning from the outset that although the Extradition Act makes the Minister of Justice the designated authority to process and deal with extradition requests from foreign countries and to make such extradition requests on behalf of Palau, in practice, extradition requests are handled by the AGO on behalf of the Minister of Justice.

737. Pursuant to Section 9 of the Extradition Act, the Minister of Justice, upon receipt of an extradition request, shall notify the president, review and consider the request, determine whether the

request meets the Act's requirements, promptly communicate the outcome of his analysis to the requesting country, and identify in writing any deficiencies in the request.

738. Pursuant to Section 8 of the Extradition Act, the Minister of Justice has to determine whether all formal requirements for granting the request are met, including whether the request relates to an extraditable offense and was made by an extradition country. Extradition countries are countries with which Palau has entered into an extradition treaty. Should the Minister of Justice determine that a requesting country is not an extradition country, he may nevertheless designate the requesting country as such pursuant to Section 30 Extradition Act and for purposes of a particular extradition request.

739. Palau has entered into three extradition treaties: one with the United States, one with the Marshall Islands, and one with the Federated States of Micronesia.

740. Upon determination that all formal requirements for initiation of extradition proceedings are met, the Minister of Justice may impose conditions on the requesting country for the treatment of the extradited person. The Minister may apply to the Supreme Court for warrants of arrest (Section 13), provisional arrest (Section 16), surrender (Section 21), and for re-extradition (Section 23). A hearing will be held before a Palauan judge to determine whether the requirements of the Extradition Act have been met and if the circumstances would require surrender of a person for the purpose of standing trial or serving a sentence for an extraditable offense. The Minister of Justice appears in the hearing on behalf of the requesting country.

741. If the Minister concurrently receives two or more extradition requests for the same person, the Minister has the discretion to decide the order in which to consider the requests.

742. Section 11 Extradition Act describes in great detail the documents that shall accompany an extradition request.

#### Extradition of Nationals (c. 39.2):

743. Pursuant to Section 7 (a) of the Extradition Act, Palau has an obligation to extradite persons who are not Palauan citizens or nationals or of Palauan ancestry if the request relates to an extraditable offense, all other requirements of the Extradition Act have been satisfied and no valid and legally-sustainable extradition objections would preclude extradition.

744. Section 7 (b) of the Extradition Act provides that Palau shall not be bound to extradite its own citizens or nationals, but may grant extradition if extradition is deemed proper, whereby it is in the discretion of the court to make that determination. If Palau denies extradition solely on the basis of citizenship or nationality, it shall submit the case to its competent authorities for purposes of prosecution. If the offense for which extradition is sought is punishable by death, no citizen of Palau or person of Palau ancestry shall be extradited to the requesting country.

745. In the past, Palau has twice extradited its own citizens and has never refused any request for extradition of Palauan nationals.

#### Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):

746. Should the case arise that Palau denies extradition of an individual based on Palauan nationality, Section 7 (b) Extradition Act the case has to be submitted to the Palauan competent authorities for prosecution.

747. Pursuant to Section 5 MLA Act, the Attorney General through the Minister of State may request the competent authorities of a foreign state for mutual legal assistance in any investigation commenced or proceeding instituted in Palau and relating to the commission of a serious offense as defined in the MLA Act.

748. Section 7 MLA Act specifies the types of assistance Palau may request, including the taking of evidence or documents or other real evidence, the obtaining and executing of search warrants or other lawful instruments authorizing a search for, and seizure of, relevant evidence, the location or restraint of any property believed to be the proceeds of crime and located in the requested state, the confiscation of property subject of a Palauan confiscation order, the transmission of any confiscated property or any proceeds realized there from to Palau, the transfer of a person who consents to assist in relevant investigations or proceedings as well as the provision of any other form of assistance that involves the exercise of coercive powers over a person or property.

749. In cases where extradition of a Palauan citizen is refused based on Section 7 (b) Extradition Act, Palau may, therefore, cooperate with other countries on procedural as well as evidentiary aspects to ensure the efficiency of the prosecution under Palauan law.

#### Efficiency of Extradition Process (c. 39.4):

750. Section 21 Extradition Act provides that where extradition proceedings have been instituted, and the person has not waived extradition or voluntarily consented to surrender pursuant to Section 20 of the Act, a judge shall hold a hearing within 60 days to determine whether the person should be surrendered. Within seven days of the surrender determination hearing, the judge shall issue a surrender warrant or deny the application for extradition and surrender. In the first case, the Minister shall immediately inform the requesting state of the length of time the person has been held in custody since issuance of the surrender warrant and of the requesting country's obligation to expeditiously arrange for execution of the surrender warrant. Where a person is in custody pursuant to a surrender warrant but has not been surrendered within 60 days of the date the surrender warrant was issued, the person may apply to a judge for rescission of the surrender warrant and release from custody and a hearing shall be held on the application.

751. Other provisions of the Extradition Act expressly call for the prompt handling of extradition proceedings, i.e., Section 9 calls upon the Minister to promptly communicate his determination of extradition requests to the requesting country and ask the requesting country to immediately cure any formal deficiencies in the request, should there be any, and Section 16 provides that a person arrested under an arrest warrant or provisional arrest warrants shall be brought before the judge without unnecessary delay.

#### Additional Element (R.39)—Existence of Simplified Procedures relating to Extradition (c. 39.5):

752. Pursuant to Section 8 of the Extradition Act, the Minister may receive extradition requests directly from foreign states or Interpol. Persons may not be extradited based only upon warrants of



arrest or judgments, as the Extradition Act requires the submission of supporting documents as provided in Section 11 of the Extradition Act. Pursuant to Section 20 Extradition Act, if a person waives extradition and voluntarily consents to surrender for criminal prosecution or punishment for any extraditable offense or non-extraditable offense which the person has been charged for or convicted of, and provided the judge is satisfied that the consent is voluntary and informed, the judge shall, without undue delay, issue a surrender warrant for the person with respect to the offense for which the person has consented to be surrendered. In such cases, no surrender determination hearing pursuant to Section 21 Extradition Act is required and a surrender warrant may be issued immediately.

Extradition Proceedings Related to Terrorist Acts and Financing of Terrorism (applying c 39.1.-39.4. in R. 39, c V.4):

753. Terrorism financing as defined in Section 24 CTA is punishable with imprisonment of 20 years to life or 10 years to life and, provided the dual criminality requirement is met, is therefore an extraditable offense pursuant to Section 5 Extradition Act.

754. Section 14 CTA further expressly provides that terrorism offenses are declared to be extraditable offenses and that extradition for terrorism offenses shall be carried out pursuant to and in accordance with the Extradition Act.

755. All provisions and procedures of the Extradition Act as outlined under R 39.1-4 therefore also apply with respect to extradition requests for terrorism financing offenses.

Additional Element under SR V (applying c. 39.5 in R. 39, c V.8):

756. Section 14 CTA provides that extradition for terrorism offenses shall be carried out pursuant to and in accordance with the Extradition Act. The provisions discussed under R 39.5 therefore also apply with respect to extradition requests for terrorism financing offenses.

Statistics (applying R.32):

757. Palau has received three extradition requests from the United States, one of which involved a Chinese citizen and two of which involved Palauan citizens. All requests were granted. Palau has never refused any request for extradition.

758. Recently, Palau has made a request to New Zealand for extradition of a U.S. citizen purportedly involved in the Pacific Savings Bank case, which is discussed in the general section of this report. The request is pending.

#### **6.4.2. Recommendations and Comments**

- To allow for the extradition of individuals involved in money laundering in all cases, the Criminal Code should be amended to include all categories of predicate offenses as listed in the international standard.

#### 6.4.3. Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s. 6.4 underlying overall rating
<b>R.39</b>	<b>LC</b>	Due to the dual criminality requirement, Palau's ability to allow for extradition may be limited in cases involving any of the predicate offenses not covered by the MLPCA.
<b>R.37</b>	<b>LC</b>	Palau may not provide mutual legal assistance relating to noncoercive measures absent dual criminality.
<b>SR.V</b>	<b>PC</b>	See other sections.

#### 6.5. Other Forms of International Cooperation (R.40 & SR.V)

##### 6.5.1. Description and Analysis

Legal Framework:

Widest Range of International Cooperation (c. 40.1) and Clear and Effective Gateways for Exchange of Information (c. 40.2):

759. In accordance with Section 8 FIA, the FIC is the official agency for information as to the status of financial institutions licensed in Palau. The FIC is authorized to cooperate and exchange information with agencies of foreign governments and international organizations to the extent set forth in the FIA and Palau laws. The FIC has had limited contacts and experience in cooperation with international counterparts. Recently, the FIC has undertaken steps to enhance the exchange of information in the region and is drafting an information exchange agreement with supervisors in the Federated States of Micronesia. Information sharing will include bank-branch information, bank-examination information, and fit-and-proper information as needed. The FIC has reached out to other supervisors and FIUs from time to time, but with limited results.

760. Section 19 of the MLPCA and Section 16 of the CTA provides for both exchange of financial intelligence on a reciprocal and spontaneous basis, respectively. In accordance with Section 19 MLPCA, the FIU may enter into reciprocal arrangements (MOUs) with foreign FIUs or other law enforcement agencies for the formal exchange of information on a peer to peer basis with foreign FIUs. The FIU has signed MOUs for exchange of financial intelligence with Chinese Taipei, the Philippines, and Thailand. Palau has provided information to Chinese Taipei and the United States in response to requests for information.

761. Section 16 CTA allows the Minister of Justice, the Attorney General, the FIU, and other law enforcement authorities and officers of Palau designated by the Minister of Justice to be freely authorized and encouraged to share and disclose intelligence information relating to terrorism, terrorist organizations, transnational organized crime, illicit drugs, money laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological, and other potentially deadly materials, and to provide early warning of such matters to the competent law enforcement authorities of (a) any foreign State that is party to an international terrorism convention in respect of which Palau

is also a party; (b) any foreign State that is a member of the Pacific Islands Forum; (c) the United States, in accordance with the duties and responsibilities of Palau under the Compact of Free Association with the United States; and (d) any other foreign State that is a member of the United Nations.

762. Section 3904 (b) allows Customs and the FIU to make any information received in accordance with the CCDA available to an agency of a foreign government if requested.

Provision of Assistance in Timely, Constructive, and Effective Manner (c. 40.1.1):

763. The FIU and the FIC have limited experience with the provision of assistance to their foreign counterparts, but there is nothing in the laws or their procedures that would prohibit the timely provision of assistance.

Spontaneous Exchange of Information (c. 40.3):

764. Section 16 CTA would allow the Minister of Justice, the Attorney General, the FIU, and other law enforcement authorities and officers of Palau designated by the Minister of Justice to spontaneously provide information on money laundering and predicate offenses.

Making Inquiries on Behalf of Foreign Counterparts (c. 40.4):

765. Section 19(c) MLPCA states that the FIU may comply with requests so long as it is within the scope of the MOU and not in conflict with Palau law. There is nothing in Palauan law that would prohibit the FIU to make inquiries on behalf of foreign FIUs.

766. The BPS has regularly conducted simple inquiries on behalf of foreign counterparts.

FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1):

767. There is nothing in the MLPCA that would prevent the FIU from searching its own database or searching other databases to which it has access on behalf of foreign FIUs.

Conducting of Investigations on Behalf of Foreign Counterparts (c. 40.5):

768. The BPS indicated that it regularly provides information upon requests from U.S. law enforcement agencies. As such, the BPS is of the opinion that it is also authorized to conduct investigations on behalf of foreign counterparts.

No Unreasonable or Unduly Restrictive Conditions on Exchange of Information (c. 40.6):

769. For information exchange in accordance with the MLPCA or the CCDA the usual confidentiality requirements apply, but there are no unreasonable or unduly restrictive conditions.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 40.7):

770. Section 3904 (b) that allows Customs and the FIU to make any information received in accordance with the CCDA available to an agency of a foreign government, states that the criminal,

tax or regulatory purpose for which the information is sought has to be stated. This would imply that there is no limitation on sharing CCDA information related to tax information.

771. The MLPCA also does not prohibit the sharing of information for tax matters.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 40.8):

772. Section 26 MLPCA explicitly states that bank or professional secrecy may not be invoked for refusal to provide information required in connection with an investigation related to ML and that is ordered or carried out pursuant to an order of the Supreme Court. However, since not all DNFBPs that are present in Palau (attorneys, including those that provide company formation services) are covered under the MLPCA, Section 26 would not per se apply to these DNFBPs.

Safeguards in Use of Exchanged Information (c. 40.9):

773. Section 3904(c) that allows Customs and the FIU to make any information received in accordance with the CCDA available to an agency of a foreign government, states that the information made available to any foreign government shall be received by them in confidence and shall not be disclosed but for official purposes.

774. Section 19(b) MLPCA states that exchanges of information by the FIU are governed by confidentiality requirements similar to those of the MLPCA.

Additional Element—Exchange of Information with Non-Counterparts (c. 40.10 & c. 40.10.1):

775. The CCDA allows information exchange by Customs and the FIU with any agency of a foreign government. The MLPCA allows the FIU to enter into MOUs not only with foreign FIUs but also with other law enforcement agencies.

776. Section 8 FIA authorizes the FIC to cooperate and exchange information with agencies of foreign governments and international organizations to the extent set forth in the FIA and Palauan laws. There is no limitation on the type of agencies.

777. The Palau authorities do not have experience with cross-agency information exchange.

Additional Element—Provision of Information to FIU by Other Competent Authorities pursuant to request from Foreign FIU (c. 40.11)

778. There is nothing in the MLPCA preventing the FIU from acting as a conduit for an information request from a foreign FIU which requires a response or input from other government agencies. However, to date, there has not been such a request through the FIU.

International Cooperation under SR V (applying c. 40.1-40.9 in R. 40, c. V.5) and Additional Element under SR V (applying c. 40.10-40.11 in R. 40, c. V.9):

779. See section 6.4.1

Statistics (applying R.32):

780. There is only limited experience with international information exchange, most of which pertains to mutual legal assistance by the OAG and BPS. The authorities do not keep statistics on these types of information exchanges.

#### **6.5.2. Recommendations and Comments**

- Palau authorities have only limited experience with providing international cooperation to their foreign counterparts. A majority of the request seem to be initiated by the foreign counterparts.

#### **6.5.3. Compliance with Recommendation 40 and Special Recommendation V**

	<b>Rating</b>	<b>Summary of factors relative to s.6.5 underlying overall rating</b>
<b>R.40</b>	<b>C</b>	
<b>SR.V</b>	<b>PC</b>	See other sections.

## 7. OTHER ISSUES

### 7.1. Resources and Statistics

- As mentioned in sections 2.5 and 3.10, the FIU and the FIC have significant human and financial resource deficiencies.
- As indicated in section 2.6, the Palau authorities are receiving ample assistance from international donors, yet techniques learned do not always seem to be applied in practice with respect to initiating money laundering investigations.
- As mentioned in section 2.6, authorities should establish an audit trail for STRs between the FIU, BPS, and OAG to enable better insight into the effectiveness of the reporting duty.
- Because there are few cases, there has been no tradition of keeping statistics and much of the information is in the memory of the persons involved. Authorities should develop systems to keep better statistics on STRs, ML/FT investigations, prosecutions and convictions, number of cases and amounts of property frozen, seized and confiscated, mutual legal assistance, and extradition requests.

	Rating	Summary of factors underlying rating
R.30	PC	Palau has significant problems with respect to adequate financial and human resources for the FIU and FIC.  Customs and the BPS should have more technical resources available for their work on money laundering investigations and cross-border cash activities.  BPS should apply the techniques learned during trainings by initiating more money laundering investigations.
R.32	NC	Palau does not regularly review the effectiveness of its AML/CFT system.  There are no comprehensive statistics on STRs, ML investigations, amounts frozen, seized, confiscated, mutual legal assistance, and extradition requests.

### 7.2. General Framework for AML/CFT System

781. The amendments to the MLPCA that were passed on December 1, 2007 and signed into law by the President on December 19, 2007, were introduced into the Senate in January 2005. Because the legislative process has taken a long time, several matters of the international standards are not addressed in the law, for instance DNFBPs, PEPs, and ongoing due diligence. Moreover, probably due to different revisions, the MLPCA is in some places incoherent or even contradictory (e.g., different treatment of cash dealers and financial institutions, conflicts between Section 49 FIA and Section 11 MLPCA, and Section 6 MLPCA and Section 3902 CCDA).

782. The MLPCA has, as a result of the inconsistencies, duplications and contradictions, become a legislation that can be interpreted in different ways. This could leave implementation for the private sector to a certain extent “guess work,” and does not promote equal and consistent implementation. In

order to give to the persons required to comply with the AML/CFT legal framework a clearer legal environment as well as to provide professionals involved in the fight against money laundering and terrorist financing with a clear legal tool, it is strongly suggested that a new law on AML/CFT be drafted, taking into account the mission's recommendations, instead of trying to amend and revise the current version.

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating <sup>4</sup>
<b>Legal systems</b>		
ML offense	<b>PC</b>	<p>Palau does not provide for any predicate offenses in the categories of participation in an organized criminal group and racketeering, illicit arms trafficking, illicit trafficking in stolen and other goods, counterfeiting and piracy of products, environmental crimes, extortion, piracy, and insider trading and market manipulation.</p> <p>The money laundering offense does not clearly extend to “the use of criminal proceeds.”</p> <p>The definition of “proceeds of crime” does not expressly cover direct as well as converted proceeds.</p>
ML offense—mental element and corporate liability	<b>C</b>	
Confiscation and provisional measures	<b>PC</b>	<p>The law does not allow for the confiscation of proceeds of, instrumentalities used or intended for use in the commission of a predicate offense for money laundering.</p> <p>The law does not allow for the confiscation of property of corresponding value to property laundered, instrumentalities intended for use in the commission of a money laundering offense, as well as proceeds of and instrumentalities used in or intended for use in the commission of any predicate offense.</p> <p>No freezing measures are available for property related to terrorism financing.</p> <p>No measures are in place to identify or trace property relating to terrorism financing.</p>
<b>Preventive measures</b>		
Secrecy laws consistent with the Recommendations	<b>C</b>	
Customer due diligence	<b>NC</b>	There is a lack of effective implementation of the CDD measures.

<sup>4</sup> These factors are only required to be set out when the rating is less than Compliant.



		<p>Occasional transactions that appear to be linked are not addressed.</p> <p>There is a threshold gap between \$1,000 and \$10,000 for identifying occasional transactions that are wire transfers.</p> <p>There is no requirement to undertake CDD where there is a suspicion of ML or FT.</p> <p>There is no requirement to obtain information on the provisions regulating the power to bind a legal person or arrangement.</p> <p>There is no requirement to obtain the purpose and nature of business relationships or to conduct ongoing due diligence on the relationships.</p> <p>High-risk categories of customers do not require enhanced due diligence.</p> <p>Insurance agents classified as OTC exchange dealers are not required to conduct CDD for transactions under \$2,500.</p> <p>Insurance agents classified as OTC exchange dealers are not required to conduct CDD on occasional transactions, identify legal persons, beneficial owners, obtain information on the purpose and nature of the relationship, ongoing due diligence.</p>
Politically exposed persons	NC	Neither the MLPCA nor the FIA address the issue of PEPs as defined by the FATF.
Correspondent banking	NC	The MLPCA does not address the issue of cross-border correspondent banking relationships or payable-through-accounts.
New technologies & non face-to-face business	NC	<p>Neither the MLPCA nor the FIA require financial or other institutions to have policies in place needed to prevent the misuse of technological developments.</p> <p>The MLPCA does not require OTC exchange dealers to have policies in place needed for non-face-to-face business or to prevent the misuse of technological developments.</p>
Third parties and introducers	NC	Neither the MLPCA nor the FIA address the issue of introduced business.
Record-keeping	NC	Financial institutions are not required to maintain all necessary records on transactions for at least five years.

		<p>There is no requirement for financial institutions to maintain records sufficiently to permit reconstruction of individual transactions.</p> <p>The record-keeping requirements do not require financial institutions to maintain account files and business correspondence for at least five years.</p> <p>It should be made clear in the law that financial institutions must ensure that all customer and transaction records are available on a timely basis.</p> <p>Insurance dealers classified as “cash dealers” are not required to keep records under the MLPCA.</p> <p>Insurance dealers classified as “OTC exchange dealers” are not required to obtain CDD information for transactions under \$2,500 unless they are unusual or unjustifiably complex, keep account files and business correspondence pursuant to criterion 10.2.</p> <p>They are also not required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities.</p>
Unusual transactions	<b>NC</b>	<p>The requirements of Section 11 of the MLPCA have just recently passed and are not fully implemented.</p> <p>No regulations or guidance notes have been issued and there is no AML/CFT examination process in place. No AML/CFT examinations have been conducted to ensure compliance.</p> <p>Insurance agents classified as OTC exchange dealers are not required to examine as far as possible the background and purpose of such transactions and to document their findings in writing</p>
DNFBP–R.5, 6, 8–11	<b>NC</b>	<p>None of the DNFBPs operating in Palau, that is, lawyers and CSPs, are covered by the AML/CFT legislation.</p>
Suspicious transaction reporting	<b>PC</b>	<p>The deficiencies in the list of predicate offences impact the scope of the requirements to report STRs.</p> <p>The reporting of suspicious transactions related to terrorism is not sufficiently covered in the MLPCA.</p> <p>There is no requirement to report attempted transactions.</p> <p>There is no adequate implementation of the reporting duty by financial and other institutions.</p> <p>Insurance agents classified as “OTC exchange dealers” are not required to report attempted</p>

		transactions or to file STRs where there is a suspicion of FT.
Protection & no tipping-off	<b>LC</b>	<p>Section 21 of the MLPCA could constitute tipping off by the authorities.</p> <p>There no explicit tipping-off prohibition in the MLPCA.</p>
Internal controls, compliance & audit	<b>PC</b>	<p>The MLPCA does not include the need for timely access to customer identification data.</p> <p>Training requirements do not include the need for training on current money laundering and financing of terrorism techniques, new developments, methods and trends.</p> <p>There are no financial institution requirements for employee screening.</p> <p>Cash dealers and OTC exchange dealers are not required to develop compliance programs for AMLCFT under Section 14 of the MLPCA or any other Section of the Act.</p>
DNFBP-R.13-15 & 21	<b>NC</b>	None of the DNFBPs operating in Palau, that is, lawyers and CSPs, are covered by the AML or the CFT Law.
Sanctions	<b>LC</b>	<p>The FIC has not issued any regulations providing for remedial provisions.</p> <p>The FIC has sanctioning powers; however, it has not used them for AML/CFT purposes.</p>
Shell banks	<b>PC</b>	<p>There is no requirement for banks to have a meaningful mind and management in Palau nor an explicit prohibition against shell banks.</p> <p>Palau does not prohibit financial institutions from entering into correspondent banking relationships with shell banks.</p> <p>Financial institutions are not required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.</p>
Other forms of reporting	<b>C</b>	
Other NFBP & secure transaction techniques	<b>LC</b>	There is still very high cash usage in the Palauan economy.
Special attention for higher risk countries	<b>NC</b>	Financial institutions, cash dealers, or alternative remittance systems are not provided information regarding concerns about weaknesses in the

		<p>AML/CFT systems of other countries.</p> <p>Palau has no plan or procedure to apply counter-measures to those countries not following FATF Recommendations.</p> <p>No regulations or guidance notes have been issued and there is no AML/CFT examination process in place.</p> <p>No AML/CFT examinations have been conducted to ensure compliance.</p> <p>Insurance agents classified as OTC exchange dealers are not covered for compliance with FATF Rec. 21</p>
Foreign branches & subsidiaries	<b>NC</b>	<p>There are no requirements in the MLPCA or the FIA that require financial institutions to ensure that their foreign branches observe AML/CFT measures consistent with home-country requirements and FATF recommendations as required by Recommendation 22.</p>
Regulation, supervision and monitoring	<b>NC</b>	<p>The FIC is not properly funded and staffed and has not supervised its financial institutions to ensure effective implementation of AML/CFT requirements.</p> <p>No designated supervisor for cash dealers and OTC exchange dealers.</p> <p>Although the FIC has indicated that it will categorize MVTS as ARS, no implementation of the MLPCA has commenced</p>
DNFBP—regulation, supervision and monitoring	<b>NC</b>	<p>None of the DNFBPs operating in Palau, that is, lawyers and CSPs, are covered by the AML or the CFT Law.</p>
Guidelines & Feedback	<b>NC</b>	<p>Palau has not provided its financial institutions, OTC exchange dealers, ARS or DNFBPs with guidelines or STR/CTR forms to assist them in implementing and complying with their respective AML/CFT requirements.</p> <p>The competent authorities have not provided feedback to financial institutions or DNFBPs regarding the reporting of suspicious transactions.</p>
<b>Institutional and other measures</b>		
The FIU	<b>PC</b>	<p>No STR reporting guidance provided, nor any forms for CTR and STR reporting.</p>

		<p>No provisions for the FIU to seek additional information from reporting entities except by court order.</p> <p>No standard operating procedure or written procedure for STR analysis and dissemination.</p> <p>STR analysis does not include all available and relevant intelligence.</p> <p>A lack of resources undermines the effectiveness of the FIU's analysis and dissemination work.</p> <p>No publicly available FIU annual report nor statistics.</p>
Law enforcement authorities	<b>LC</b>	<p>The police focuses mainly on investigating the predicate offense and less on money laundering.</p> <p>The police does not make use, in the course of investigations, of all the powers provided to it by law.</p>
Powers of competent authorities	<b>LC</b>	<p>The legislation does not provide for powers for authorities to compel, search, seize and obtain records during terrorist financing investigations and investigation into underlying predicate offenses</p>
Supervisors	<b>PC</b>	<p>Palau meets the requirements regarding supervisory powers to monitor and inspect financial institutions; however, it has not utilized these powers to ensure compliance.</p>
Resources, integrity, and training	<b>PC</b>	<p>Palau has significant problems with respect to adequate financial and human resources for the FIU and FIC</p> <p>Customs and the BPS should have more technical resources available for their work on money laundering investigations and cross-border cash activities</p> <p>BPS should apply the techniques learned during trainings by initiating more money laundering investigations.</p>
National co-operation	<b>LC</b>	<p>The MLWG is not functioning in the most effective way</p>
Statistics	<b>NC</b>	<p>Palau does not regularly review the effectiveness of its AML/CFT system</p> <p>There are no comprehensive statistics on STRs, ML investigations, amounts frozen, seized, confiscated, mutual legal assistance and extradition requests.</p>

Legal persons–beneficial owners	<b>PC</b>	<p>Besides the basic registration requirements, there are no additional obligations regarding obtaining information on the ultimate beneficial owners and control structure of corporations, nor does the law provide for any measures on ensuring transparency or preventing unlawful use of legal persons.</p> <p>Information on corporations and their beneficial ownership and control structure might not always be adequate, accurate and current.</p>
Legal arrangements – beneficial owners	<b>PC</b>	<p>Besides the basic registration requirements, there are no additional obligations regarding obtaining information on the ultimate beneficial owners and control structure of trusts, nor does the law provide for any measures on ensuring transparency or preventing unlawful use of legal arrangements.</p> <p>Information on trusts might not always be adequate, accurate and current.</p>
<b>International Cooperation</b>		
Conventions	<b>PC</b>	<p>Palau has not signed and ratified the Palermo and Vienna Conventions.</p> <p>Both the Palermo and Vienna Conventions are not fully implemented.</p>
Mutual legal assistance (MLA)	<b>PC</b>	<p>Due to the dual criminality requirement, Palau’s ability to provide mutual legal assistance may be limited in cases involving any of the predicate offenses not covered by the MLPCA.</p> <p>The law does not allow for the confiscation of property of corresponding value to property laundered, instrumentalities intended for use in the commission of a money laundering offense.</p> <p>The MLA Act does not provide for a clear and efficient process for the execution of mutual legal assistance requests in a timely way and without undue delay.</p> <p>Palau has not considered devising and applying mechanisms for determining the best venue for prosecution of defendants in cases that are subject to prosecutions in more than one country.</p> <p>Not all the DNFBPs are covered by the MLPCA and therefore mutual legal assistance may be avoided by invoking legal professional secrecy.</p>
Dual criminality	<b>LC</b>	Absent dual criminality, Palau may not provide

		mutual legal assistance even with respect to noncoercive measures.
MLA on confiscation and freezing	<b>PC</b>	<p>Due to the dual criminality requirement, Palau's ability to provide mutual legal assistance may be limited in cases involving any of the predicate offenses not covered by the MLPCA.</p> <p>The law does not allow for the confiscation of proceeds of, instrumentalities used or intended for use in the commission of a predicate offense for money laundering.</p> <p>The law does not allow for the confiscation of property of corresponding value to property laundered, instrumentalities intended for use in the commission of a money laundering offense, as well as proceeds of and instrumentalities used in or intended for use in the commission of any predicate offense.</p> <p>Apart from one MOU for Mutual Legal Assistance with the United States, which is limited in scope to a specific case, Palau has not entered into any bilateral or multilateral arrangements with other countries to coordinate seizing and confiscation actions.</p>
Extradition	<b>LC</b>	Due to the dual criminality requirement, Palau's ability to allow for extradition may be limited in cases involving any of the predicate offenses not covered by the MLPCA.
Other forms of co-operation	<b>C</b>	
<b>Nine Special Recommendations</b>		
SR.I Implement UN instruments	<b>PC</b>	<p>The authorities could not provide assessors with the required information to establish whether or not Palau has signed and ratified the UN Convention on the Suppression of the Financing of Terrorism.</p> <p>Palauan law does not allow for the identification, tracing, and freezing of property relating to terrorism financing.</p> <p>Implementation of UNSCR 1267 and UNSCR 1373 is incomplete.</p>
SR.II Criminalize terrorist financing	<b>LC</b>	<p>The terrorism financing offense does not clearly extend to legitimate funds.</p> <p>The lack of investigations, prosecutions, and convictions for terrorist financing make it difficult to assess the effectiveness of the legal framework.</p>

<p>SR.III Freeze and confiscate terrorist assets</p>	<p><b>NC</b></p>	<p>Even though the Minister of Justice has the power to freeze, through administrative order, funds and assets of persons designated pursuant to Resolution 1267, in practice he has never made use of his powers and there are no procedures in place on how to issue, administer, and enforce such freezing actions.</p> <p>There is no designated authority responsible for receiving and issuing designations pursuant to UNSCR 1373.</p> <p>No laws and procedures are in place to freeze without delay and prior notice funds and other assets of persons designated pursuant to Resolution 1373.</p> <p>No effective mechanisms are in place to communicate to the financial sector any freezing actions taken pursuant to Resolutions 1267 and 1373.</p> <p>Financial institutions and other persons or entities that may be holding targeted funds or assets were never provided with clear instructions and guidance regarding their obligations under the freezing mechanisms.</p> <p>No effective procedures for considering de-listing request are in place.</p> <p>No procedures for unfreezing in a timely manner the funds or other assets inadvertently affected by the freezing measures are in place.</p> <p>No clear procedures for access to funds in accordance with UNSCR 1452 are in place.</p> <p>No procedures to challenge any freezing measures are in place.</p> <p>Financial institutions are under no obligations with respect to SR III and no civil, administrative, or criminal sanctions are available for failure to take freezing actions or to report that assets and funds of a designated person or entity are held by a financial institution.</p>
<p>SR.IV Suspicious transaction reporting</p>	<p><b>PC</b></p>	<p>The reporting of suspicious transactions related to terrorism is not sufficiently covered in the MLPCA.</p>
<p>SR.V International cooperation</p>	<p><b>PC</b></p>	<p>No freezing measures are available for property related to terrorism financing.</p> <p>No measures are in place to identify or trace property</p>



		<p>relating to terrorism financing.</p> <p>Palau has not considered devising and applying mechanisms for determining the best venue for prosecutions of defendants in terrorist or terrorist financing cases that are subject to prosecutions in more than one country.</p>
SR.VI AML/CFT requirements for money/value transfer services	NC	<p>ARS have not been licensed nor identified.</p> <p>No regulations issued for ARS.</p> <p>ARS are not required to conduct full CDD on transactions as required in Rec. 5.</p> <p>No provisions for compliance with FATF Recs. 6, 8, 9, 15 and 22.</p> <p>ARS are not required to keep all necessary records of all transactions for 5 years after the transaction is completed nor records of account files and business correspondence.</p> <p>No requirement for ARS to file STRs for attempted transactions.</p> <p>The reporting of suspicious transactions related to terrorism is not sufficiently covered in the MLPCA in that there is no adequate requirement to report funds that are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.</p> <p>No explicit requirement to prohibit ARS from disclosing (“tipping-off”) the fact that a STR or related information is being filed with the FIU.</p> <p>No requirement to apply appropriate counter-measures to the jurisdictions that do not have adequate systems in place to deter ML or FT, in accordance with criterion 21.3.</p>
SR.VII Wire transfer rules	NC	<p>There are no wire transfer requirements for domestic institutions in the MLPCA.</p> <p>There is a gap of coverage in the MLPCA Section 6 requirements resulting in foreign wire transfers between \$1,000 and \$5,000 not being covered by wire transfer requirements.</p> <p>There are no risk-based procedures for identifying and handling wire transfers without complete originator information.</p> <p>There are no measures to effectively monitor</p>

		supervised financial institutions compliance with wire transfer rules.
SR.VIII Non-profit organizations	<b>PC</b>	No review of laws nor the NPO sector. No fit and proper test for NPO registration. No audited statements required. No active monitoring nor supervision. No outreach nor awareness raising. No designated contact point.
SR.IX Cash Border Declaration & Disclosure	<b>LC</b>	The exemption for banks, common carriers of passengers or goods, and traveler checks issuers does not fall within the criteria for SR IX.

Table 2. Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	Recommended Actions
<b>General</b>	The revisions to the MLPCA have resulted in a statute with several inconsistencies and duplications. In order to provide for a common set of requirements applicable to the financial and nonfinancial sector and a clearer legal environment, it is strongly suggested that a new law on AML/CFT be drafted taking into account the recommendations provided in this report.
<b>2. Legal System and Related Institutional Measures</b>	
<b>Criminalization of Money Laundering (R.1, 2, &amp; 32)</b>	<p>Ensure that the following acts and activities constitute predicate offenses to money laundering: in the categories of participation in an organized criminal group and racketeering, illicit arms trafficking, illicit trafficking in stolen and other goods, counterfeiting and piracy of products, environmental crimes, extortion, piracy, and insider trading and market manipulation.</p> <p>Amend the money laundering offense to expressly include “knowingly using criminal proceeds.”</p> <p>Amend the definition of the term “proceeds of crime” to expressly cover direct as well as converted criminal proceeds.</p>
<b>Criminalization of Terrorist Financing (SR.II &amp; R.32)</b>	<p>Even though the law seems to criminalize all aspects of “financing of terrorist organizations” required by the international standard, for the sake of clarity it is recommended to add a reference in Section 24 CTA to explicitly criminalize the financing of terrorist organizations.</p> <p>Amend the definition of the term “property” to expressly cover legitimate as well as illegitimate funds, corporeal as well as incorporeal property and all assets representing financial value, including claims and interests in such assets.</p> <p>The authorities should consider revisiting the fact that the imprisonment period for financing of terrorism offenses is shorter in cases where an act results in the death of a person.</p>
<b>Confiscation, freezing, and seizing of proceeds of crime (R.3 &amp; 32)</b>	<p>Amend the definition of “property subject to the offense” to expressly include the laundered property.</p> <p>Amend Section 33 MLPCA to expressly allow for the confiscation of all instrumentalities used or intended to be used in the commission of a money laundering offense.</p> <p>Amend the law to allow for confiscation of all direct and indirect proceeds of, instrumentalities used or intended for use in the commission of a predicate offense as well as property of</p>

	<p>corresponding value to such proceeds or instrumentalities.</p> <p>Amend the law to allow for the confiscation of property of corresponding value to property laundered and instrumentalities used in or intended to be used in the commission of a money laundering offense.</p> <p>Amend the law to provide for freezing of property related to terrorism financing.</p> <p>Amend the law to provide for measures to identify and trace property relating to terrorism financing.</p>
<p><b>Freezing of funds used for terrorist financing (SR.III &amp; R.32)</b></p>	<p>Provide for clear procedures on how the Ministry of Justice may issue, administer, and enforce the freezing of funds or other assets of persons designated pursuant to Resolution 1267.</p> <p>Designate an authority responsible for receiving and issuing designations pursuant to Resolution 1373.</p> <p>Put in place laws and procedures to ensure the freezing of terrorist funds and other assets of persons designated pursuant to Resolution 1373 without the need for a specific court order. Such freezing should take place without delay and without prior notice to the designated person involved.</p> <p>Put in place effective laws and procedures to examine and, where appropriate, give effect to freezing actions initiated under the mechanisms of other jurisdictions.</p> <p>Expressly provide that the term “property” as defined in the CTA includes funds and assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organizations and as well as any funds or assets derived or generated from funds or other assets owned or controlled directly or indirectly by such persons or organizations.</p> <p>Put in place effective mechanisms to ensure that all freezing actions taken pursuant to Resolutions 1267 and 1373 are immediately being communicated to the financial sector.</p> <p>Provide financial institutions and other persons or entities that may be holding targeted funds or assets with clear instructions and guidance regarding their obligations under the freezing mechanisms.</p> <p>Set out effective procedures for considering de-listing request and make them public.</p> <p>Put in place procedures for unfreezing in a timely manner the funds or other assets inadvertently affected by the freezing</p>

	<p>measures and make them public.</p> <p>Put in place clear procedures for access to funds in accordance with UNSCR 1452.</p> <p>Put in place procedures to challenge any freezing measures.</p> <p>Ensure effective monitoring of compliance with the obligations under SR III and provide for sanctions for noncompliance by financial institutions or other entities that may be holding targeted funds or assets.</p>
<b>The Financial Intelligence Unit and its functions (R.26, 30 &amp; 32)</b>	<p>Recruit an additional FIU staff member with appropriate financial analysis and/or financial investigation skills to undertake the FIU analysis functions.</p> <p>Allocate a dedicated budget to the FIU which would be under the control of the FIU head to cover operational expenses.</p> <p>Advise reporting entities formally in writing of their STR reporting obligations and provide guidance on reporting procedures.</p> <p>Consider measures to enable the FIU to obtain additional information from reporting entities during the preliminary STR analysis stage without the need for a court order.</p> <p>The FIU and OAG to determine and designate whether the FIU or the OAG should be the primary recipient of NPO threshold reports, and agree on information-sharing arrangements in respect of such reports.</p> <p>The FIU to ensure compliance by all reporting entities with STR obligations under Section 20 of the MLPCA, including U.S. chartered banks based in Palau.</p> <p>Formalize and enhance the STR analysis and dissemination process by developing written standard operating procedures.</p> <p>Consider disseminating STR reports to other relevant agencies such as the DRT and Customs, where appropriate and warranted.</p> <p>Include in the FIU Annual Report an analysis of the STR predicate crime groups, a breakdown per type of reporting entity, and if possible, an analysis of the techniques used in ML/FT in Palau.</p> <p>Make the FIU Annual Report or a sanitized version of it publicly available.</p> <p>Seek from the U.S. authorities (FinCEN) copies of all STRs filed by U.S. banks based in Palau to ensure that the FIU has access to all STRs filed by banks in Palau.</p>
<b>Law enforcement, prosecution</b>	<p>The CID should focus investigations not solely on the predicate</p>

<p><b>and other competent authorities (R.27, 28, 30 &amp; 32)</b></p>	<p>offenses but also on the money laundering offenses which would consequently enhance expertise regarding money laundering and financial investigations.</p> <p>The law enforcement agencies should make use of the range of powers provided to them by law.</p> <p>The authorities should establish an audit trail for STRs between the FIU, BPS, and OAG to enable better insight into the effectiveness of the reporting duty.</p>
<p><b>Cross Border Declaration or disclosure (SR IX)</b></p>	<p>The exemption for banks, common carriers of passengers or goods, and traveler checks issuers does not fall within the criteria for SR IX. Palau should reconsider the exemption of the declaration duty for certain persons/companies.</p> <p>The authorities should consider bringing the threshold mentioned in Section 6(a) MLPCA requiring that funds above \$5,000 are transmitted through financial institutions in line with the threshold of the cross-border cash declaration duty.</p>
<p><b>3. Preventive Measures– Financial Institutions</b></p>	
<p><b>Risk of money laundering or terrorist financing</b></p>	<p>A more formal risk approach may be developed once the FIC is appropriately staffed, funded and reorganized to take into consideration its new FIU responsibilities.</p>
<p><b>Customer due diligence, including enhanced or reduced measures (R.5–8)</b></p>	<p>Financial and other institutions should be required to undertake CDD for customers for occasional transactions that are carried out in several operations that appear to be linked.</p> <p>Financial and other institutions should be required to undertake CDD for customers that carry out occasional transactions that are wire transfers of \$1,000 or more.</p> <p>Financial institutions should be required to undertake CDD where there is a suspicion of ML or FT.</p> <p>Financial and other institutions should be required to obtain information on the purpose and intended nature of the business relationship.</p> <p>Financial institutions should be required to obtain information on the provisions regulating the power to bind a legal person or arrangement.</p> <p>Where customers are legal persons or arrangements financial institutions should understand the ownership and control structure and should determine who are the natural persons that ultimately own or control the customer.</p> <p>Ongoing due diligence should be required for all business</p>

	<p>relationships.</p> <p>Palau should require financial and other institutions to perform enhanced due diligence for higher-risk categories of customers.</p> <p>Financial and other institutions should be required to put into place appropriate risk management systems to determine whether a customer is a PEP, including all the necessary measures to protect against possible misuse of account relationships.</p> <p>Financial and other institutions should be required to take measures to know its cross-border respondent institutions, assess their AML/CFT controls, have an appropriate approval process and document respective AML/CFT responsibilities including safeguards for payable-through-accounts.</p> <p>Financial and other institutions should be required to have policies in place to prevent the misuse of technological development in money laundering or terrorist financing schemes.</p> <p>OTC exchange dealers should be required to conduct CDD on occasional transactions, identification of legal persons, beneficial owners, obtaining information on the purpose and nature of the relationship, ongoing due diligence.</p> <p>The classification of insurance agents as OTC exchange dealers or cash dealers should be clarified and appropriate supervision of the sector under the MLPCA should commence.</p> <p>CDD should be required for all transactions under the MLPCA for the insurance sector, but Palau may apply simplified CDD for life insurance with single premiums under \$2,500 or with annual premiums under \$1,000.</p>
<b>Third parties and introduced business (R.9)</b>	<p>It is recommended that Palau require financial institutions, credit institutions, cash dealers, and OTC exchange dealers that rely on third parties to perform the CDD process to take adequate steps to ensure that copies of identification data and other relevant documents will be made available from the third parties upon request.</p> <p>In addition, financial institutions should satisfy themselves that the third party is regulated and supervised appropriately.</p>
<b>Financial institution secrecy or confidentiality (R.4)</b>	No recommendations or comments
<b>Record keeping and wire transfer rules (R.10 &amp; SR.VII)</b>	<p>It is recommended that financial institutions be required to maintain all necessary records on transactions for at least five years.</p> <p>Records should be required to be maintained in a sufficient</p>

	<p>manner to permit reconstruction of individual transactions.</p> <p>Financial institutions should be required to maintain not only identification data, but account files and business correspondence for at least five years following the termination of an account or business relationship.</p> <p>It should be clarified that financial institutions need to ensure that all customer and transaction records and information be made available on a timely basis.</p> <p>Authorities should address the discrepancy between the institutions listed in Section 13(a) and Section 13(b) MLPCA.</p> <p>The MLPCA should be amended to clarify that all wire transfers of \$1,000 or more include originator information including name, account number, and address.</p> <p>For cross-border wire transfers of \$1,000 or more, ordering financial institutions should be required to include full originator information in the message or payment form accompanying the wire transfer.</p> <p>Financial institutions should be required to include, at a minimum, the originator's account information within the message or payment form for domestic wire transfers of \$1,000 or more.</p> <p>Beneficiary financial institutions should be required to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.</p> <p>Palau should have measures in place to effectively monitor compliance of financial institutions' wire transfer rules that implement SR.VII.</p> <p>The classification of insurance agents as OTC exchange dealers or cash dealers should be clarified and appropriate supervision of the sector under the MLPCA should commence.</p> <p>Include provisions under the MLPCA for OTC exchange dealers to obtain and verify CDD for transactions under \$2,500 and require OTC exchange dealers to keep records for five years after the termination of the business relationship.</p> <p>Include a provision in the MLPCA to require OTC exchange dealers to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities.</p>
<b>Monitoring of transactions and relationships (R.11 &amp; 21)</b>	<p>Palau should develop and issue regulations or guidance notes to financial and other institutions that clarify the requirements</p>



	<p>regarding special monitoring of certain transactions.</p> <p>Palau should develop procedures to identify and disseminate information to its financial institutions, cash dealers or alternative remittance systems, about weaknesses in the AML/CFT systems of other countries.</p> <p>Palau should be able to apply counter-measures to countries that continue not to apply or insufficiently apply FATF Recommendations and conduct transactions with Palau.</p> <p>Amend the MLPCA to make requirements consistent for credit and financial institutions and cash dealers or alternative remittance systems.</p> <p>Amend the MLPCA to require OTC exchange dealers to examine as far as possible the background and purpose of unusual or unjustified complexity and to document their findings in writing.</p> <p>Include OTC exchange dealers under Section 11 of the MLPCA (special monitoring of certain transactions).</p>
<p><b>Suspicious transaction reports and other reporting (R.13, 14, 19, 25, &amp; SR.IV)</b></p>	<p>Palau should ensure that there is a clear reporting duty in the MLPCA for all reporting entities to report transactions that are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations, or those who finance terrorism.</p> <p>The reporting of suspicious transactions should include the reporting of attempted transactions.</p> <p>Although there is a penalty in the MLPCA that can be used to sanction tipping-off, the MLPCA should provide for a clear prohibition for tipping off.</p> <p>Palau needs to clarify and ensure that Section 21 MLPCA does not inadvertently cause a transaction to be tipped off. Currently, Section 21(c) prescribes if the Attorney General or the FIU want to extend the stoppage of a transaction, Section 21(c) prescribes that “all parties to the transaction” must be notified. It is not clear from the text of the law if “all parties” include the ordering party and beneficiary of the transaction or only the reporting entity.</p> <p>It is recommended that Palau issue as soon as possible guidelines as well as forms to report STRs and CTRs to assist financial institutions and DNFBPs to implement and comply with their respective AML/CFT requirements.</p> <p>The competent authorities, including the FIU and the FIC, should provide financial institutions and DNFBPs that are required to report suspicious transactions, with adequate and appropriate feedback.</p>

	<p>The classification of insurance agents as OTC exchange dealers or cash dealers should be clarified and appropriate supervision of the sector under the MLPCA should commence.</p> <p>Include a requirement for OTC exchange dealers to file STRs on attempted transactions and suspicions of FT in the MLPCA.</p> <p>Several issues, such as the reporting duty and tipping off, are addressed in different sections in the law or in different laws. It would be advisable to consolidate these duplicative issues in one new AML/CFT law.</p>
<b>Internal controls, compliance, audit and foreign branches (R.15 &amp; 22)</b>	<p>Palau should consider enhancing the MLPCA Section 14 AML/CFT policy requirements to include the need for timely access to customer identification data by the compliance officer or other appropriate staff.</p> <p>Palau should clarify in Section 14(a)(1) MLPCA that the focus is not solely on centralization of information, but on record retention, the detection of unusual and suspicious transactions and the reporting obligations.</p> <p>Section 14(c) MLPCA should be enhanced to specifically include information on current money laundering and financing of terrorism techniques, new developments, methods and trends; and a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting.</p> <p>The MLPCA should be amended to ensure that insurance agents either classified as “cash dealers” or as “OTC exchange dealers” are required to develop compliance programs for AML/CFT.</p> <p>It is recommended that financial and other institutions be required to put in place screening procedures to ensure high standards when hiring employees.</p> <p>While Palau has a moratorium on licensing new banks and foreign branches, it is recommended that the MLPCA be enhanced to ensure that, if future foreign branches and subsidiaries are approved, that they observe AML/CFT measures consistent with home-country requirements and FATF Recommendations to the extent that local laws and regulations permit.</p>
<b>Shell banks (R.18)</b>	<p>Palau should enhance the MLPCA to prohibit financial institutions from entering into correspondent banking relationships with shell banks.</p> <p>Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.</p>

	Palau should consider an enhancement to the MLPCA to prohibit the establishment of shell banks.
<b>The supervisory and oversight system—competent authorities and SROs</b> <b>Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 25, &amp; 32)</b>	<p>Palau should provide adequate funding to the FIC to make sure it is properly staffed to undertake its AML/CFT supervisory function.</p> <p>Once the FIC is properly staffed, it should develop and execute an effective AML/CFT supervisory program.</p> <p>Staff should receive appropriate AML/CFT training on an ongoing basis.</p> <p>The FIC should issue guidelines and provide appropriate feedback to assist financial institutions in applying AML/CFT requirements.</p> <p>Determine whether insurance agents should be classified as “cash dealers” or “OTC exchange dealers” and designate the AML/CFT supervisor accordingly, that is the FIC under Section 14(b) or the MOJ under Section 15(b) of the MLPCA.</p> <p>The designated supervisor should commence a program of awareness raising for insurance agents and a supervisory program that includes off-site and on-site supervision.</p> <p>The FIC should promulgate regulations providing for remedial provisions as required by Section 14(b) MLPCA.</p>
<b>Money value transfer services (SR.VI)</b>	<p>Amend the MLPCA or issue regulations to provide for the prohibition of the use of fictitious name as required under criterion 5.1; for the verification of customer identification as required under criterion 5.3; for the identification and verification of beneficial owners in accordance with criterion 5.5; performance of enhanced due diligence on high-risk customers as required under criterion 5.8; allowance to perform simplified CDD as permitted under criterion 5.9-5.12.</p> <p>Amend the MLPCA or issue regulations that include provisions that satisfy the requirements under FATF Recs. 6, 8, 9, 15, and 22.</p> <p>Amend Section 12 of the MLPCA or issue regulations to require that ARS keep all necessary records on transactions for five years following the transaction and account files and business correspondence as required under Rec. 10.</p> <p>Include a provision in the MLPCA or issue regulations to require ARS to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities.</p> <p>The FIU should issue STR and CTR form templates to ARS.</p> <p>Amend the MLPCA or issue regulations to require ARS to file</p>

	<p>STRs if they suspect that the funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.</p> <p>Amend the MLPCA or issue regulations to require that ARS file STRs for attempted transactions in accordance with criterion 13.3.</p> <p>Amend the MLPCA or issue regulations to explicitly prohibit ARS from disclosing (“tipping-off”) the fact that a STR or related information is being filed with the FIU, as required under criterion 14.2.</p> <p>Amend the MLPCA or issue regulations that would allow Palau to apply appropriate counter-measures to the jurisdictions that do not have adequate systems in place to deter ML or FT, in accordance with criterion 21.3. Issue guidance to ARS to enable them to identify those jurisdictions.</p>
<b>4.Preventive Measures–Non-financial Businesses and Professions</b>	
<b>Customer due diligence and record-keeping (R.12)</b>	<p>Broaden the list of persons covered by the AML/CFT laws to explicitly include the DNFBPs operating in Palau. At a minimum, the AML/CFT legislation should apply to lawyers and CSPs when they engage in the activities identified in definition of DNFBPs in the FATF Recommendations.</p> <p>Include the requirements for CDD and record-keeping measures for lawyers and CSP activities in the AML/CFT legislation or regulations issued by the respective regulators.</p> <p>Require OTC exchange dealers to obtain and verify CDD identification without a threshold and be subject to the full requirements of FATF Rec. 5-6, 8-11.</p> <p>Provide training to lawyers and CSPs on their obligations for CDD and record-keeping measures when the AML/CFT laws are amended to include them.</p>
<b>Suspicious transaction reporting (R.16)</b>	<p>Broaden the list of persons covered by the AML/CFT laws to explicitly include the DNFBPs operating in Palau. At a minimum, the AML/CFT legislation should apply to lawyers and CSPs when they engage in the activities identified in definition of DNFBPs in the FATF Recommendations.</p> <p>Include the requirements for suspicious transaction monitoring and reporting measures for lawyers and CSP activities in the AML/CFT legislation or regulations issued by the respective regulators, in accordance with the requirements of FATF Rec. 16.</p> <p>Provide training to lawyers and CSPs on their obligations for</p>

	monitoring for and reporting of suspicious transactions measures when the AML/CFT laws are amended to include them.
<b>Regulation, supervision, monitoring, and sanctions (R.17, 24, &amp; 25)</b>	<p>Broaden the list of persons covered by the AML/CFT laws to explicitly include the DNFBPs operating in Palau. At a minimum, the AML/CFT legislation should apply to lawyers and CSPs when they engage in the activities identified in definition of DNFBPs in the FATF Recommendations.</p> <p>A supervisory and control authority should be designated for each DNFBP sector. All DNFBPs subject to the AML/CFT legislation should be subject to oversight for compliance with AML/CFT requirements.</p> <p>Consider amending the AML/CFT legislation to require that the designated regulators for the respective DNFBPs issue AML/CFT regulations to DNFBPs that cover the requirements under FATF Recommendations 12, 16, and 24.</p> <p>Agencies assigned oversight responsibility should have adequate legal authority, resources and capacity to monitor and enforce compliance with AML/CFT requirements.</p> <p>Conduct AML/CFT awareness-raising training of all operating DNFBPs, that is, lawyers and CSPs.</p>
<b>Other designated non-financial businesses and professions (R.20)</b>	Continue to encourage the use of secure transfer systems when conducting financial transactions such as, ATMs and credit cards in order to reduce reliance on cash transactions and consider issuing guidance to banks on thresholds for cash transactions.
<b>5. Legal Persons and Arrangements &amp; Non-profit Organizations</b>	
<b>Legal Persons–Access to beneficial ownership and control information (R.33)</b>	<p>There should be measures preventing the unlawful use of corporations.</p> <p>There should be measures and mechanisms to ensure that information on the beneficial owners and control structure of corporations is available in an adequate and accurate manner.</p> <p>The Registrar of Corporations should implement measures to ensure that the information on corporations and their beneficial ownership and control structure is adequate, accurate and current.</p>
<b>Legal Arrangements–Access to beneficial ownership and control information (R.34)</b>	<p>There should be measures preventing the unlawful use of legal arrangements.</p> <p>There should be measures and mechanisms to ensure that information on the beneficial owners and control structure of legal arrangements is available in an adequate and accurate manner.</p>

	<p>The Registrar of Corporations should implement measures to ensure that the information on trusts is adequate, accurate and current.</p>
<p><b>Non-profit organizations (SR.VIII)</b></p>	<p>Undertake a review of laws affecting NPOs to ensure relevancy and consistency.</p> <p>Review the information available on NPOs at the Registrar of Corporations to identify NPOs with international funding or which account for a significant size of the sector.</p> <p>Commence an audit or spot checking program targeted at higher-risk NPOs identified from the review.</p> <p>Amend the requirement for record keeping to at least five years after the completion of any financial transaction, including records of donors and expenditure.</p> <p>Designate an agency as the responsible agency for NPOs, not only in respect to registration but for broader AML/CFT matters including as a coordination point for information sharing.</p>
<p><b>6. National and International Cooperation</b></p>	
<p><b>National cooperation and coordination (R.31 &amp; 32)</b></p>	<p>Ensure that the MLWG meets on a regular basis to ensure further policy cooperation.</p> <p>Set up mechanisms to ensure structured cooperation between the FIU, CID, and Customs.</p>
<p><b>The Conventions and UN Special Resolutions (R.35 &amp; SR.I)</b></p>	<p>Palau should sign and ratify the Palermo and Vienna Conventions.</p> <p>Palau should sign and ratify all 13 conventions relating to the fight against terrorism, including the Convention for the Suppression of the Financing of Terrorism.</p> <p>It should be ensured that all provisions of the Palermo and Vienna Conventions are fully implemented.</p> <p>The CTA should be amended to allow for the identification, tracing, and freezing of property relating to terrorism financing.</p> <p>Fully implement UNSCRs 1267 and 1373.</p>
<p><b>Mutual Legal Assistance (R.36, 37, 38, SR.V &amp; 32)</b></p>	<p>The Criminal Code should be amended to include all categories of predicate offenses as listed in the international standard so as to be able to provide the widest possible range of mutual legal assistance, both with respect to money laundering and terrorism financing.</p> <p>The MLPCA should be amended to allow for the confiscation of proceeds of, instrumentalities used or intended for use in the commission of a predicate offense for money laundering based on</p>

	<p>a request by a foreign country.</p> <p>The MLPCA should be amended to allow for the confiscation of property of corresponding value to property laundered, instrumentalities intended for use in the commission of a money laundering offense, as well as proceeds of and instrumentalities used in or intended for use in the commission of any predicate offense and based on a request by a foreign country.</p> <p>A clear and efficient process for the execution of mutual legal assistance requests in a timely way and without undue delay should be put in place.</p> <p>Palau should allow for the provision of mutual legal assistance even absent dual criminality if the request relates to noncoercive measures.</p> <p>Palau should consider devising and applying mechanisms for determining the best venue for prosecutions of defendants in cases that are subject to prosecutions in more than one country.</p> <p>Palau should consider whether it would be beneficial to enter into formal agreements with other countries to coordinate seizing and confiscation actions.</p> <p>The law should be amended to allow for the identification, tracing and the freezing of property related to terrorism financing.</p> <p>All the DNFBPs should be covered by the MLPCA to allow for mutual legal assistance with respect to information held by these entities.</p>
<b>Extradition (R. 39, 37, SR.V &amp; R.32)</b>	<p>To allow for the extradition of individuals involved in money laundering in all cases, the Criminal Code should be amended to include all categories of predicate offenses as listed in the international standard.</p>
<b>Other Forms of Cooperation (R. 40, SR.V &amp; R.32)</b>	<p>Palau authorities have only limited experience with providing international cooperation to their foreign counterparts. A majority of the request seem to be initiated by the foreign counterparts.</p>
<b>7. Other Issues</b>	
<b>Other relevant AML/CFT measures or issues</b>	<p>Palau has significant problems with respect to adequate financial and human resources for the FIU and FIC</p> <p>Customs and the BPS should have more technical resources available for their work on money laundering investigations and cross-border cash activities</p> <p>BPS should apply the techniques learned during trainings by initiating more money laundering investigations.</p>

	<p>Palau does not regularly review the effectiveness of its AML/CFT system</p> <p>There are no comprehensive statistics on STRs, ML investigations, amounts frozen, seized, confiscated, mutual legal assistance and extradition requests.</p>
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### **Annex 1. Authorities' Response to the Assessment**

The Republic of Palau Authorities have reviewed the IMF-APG Mutual Evaluation Assessment in detail. We agree with a majority of the findings and are committed to working on the majority of the items contained in the "Recommended Action Plan to Improve the AML/CFT System".

We thank the evaluators for their taking the time to gain a detailed understanding of the strengths and weaknesses of the Palau AML/CFT system. We are glad that the evaluators appreciate the limited financial system in the Republic of Palau and the recent updates to national legislation which took prolonged periods and concentrated efforts by the authorities to enable passage through our congress. The updates address a majority of the shortcomings in the AML/CFT system, which were identified during the previous assessment in 2003. Other new aspects of the system, such as bulk cash couriers have also been addressed in new legislation which is being vigorously implemented and enforced by the appropriate authorities. For a small jurisdiction with such limited financial and personnel resources, we believe the Republic is maximizing on these limitations in order to implementing the FATF 40 + 9 Recommendations; and to that end, have experienced success within this context.

While we agree with the majority of the recommendations, we are not as agreeable with the importance given by the evaluators to some technical deficiencies in the laws, such as a lack of criminalization of organized criminal group and racketeering, illicit arms trafficking, piracy, and insider trading and market manipulation for the reason that such crimes are nonexistent in the in Palau at this time and do not pose an immediate or eminent threat. As the assessment team determined, there are no major organized criminal groups, all possession of arms is highly illegal, therefore trafficking is included, there have been no instances of piracy, and finally as there are no markets (stock or capital) to be manipulated, the Republic believes these are mere technical deficiencies that should be rectified in the future and the authorities will continue to work within the current political environment to effectuate needed changes.

Many of the deficiencies contained in the Action Plan are currently being addressed by FIC and FIU regulations that will come into effect during 2008. These include in particular the basic and enhanced CDD requirements and record keeping requirements.

In summary, the Republic of Palau accepts the assessment report and agrees with a majority of the findings. The Republic further agrees to the publication of the assessment report. Lastly, the Republic believes that a majority of the noted deficiencies will be addressed during the remainder of 2008 and into the first quarter of 2009.

**Annex 2. List of All Bodies Met During the On-Site Visit**

1. Vice President and Minister of Justice
2. Members of the *Olbiil Era Kelulau* (Congress)
3. Attorney General
4. Minister of State
5. Minister of Finance
6. Money Laundering Working Group
7. Bankers Association
8. Banks – local and foreign
9. Bar Association
10. Bureau of Public Safety: Division Criminal Investigation and Drug Enforcement, Division of Marine Law Enforcement, Division of Patrol
11. Bureau of Immigration
12. Bureau of Revenue, Customs and Taxation
13. Chambers of Commerce
14. Chief Justice
15. Credit Union
16. Financial Institutions Commission
17. Finance Company
18. Financial Intelligence Unit
19. Foreign Investment Board
20. Insurance providers
21. Law office
22. Money Remittance Operators
23. Office of Attorney General
24. Office of the Special Prosecutor
25. Public Accountant and Auditor
26. Registrar of Corporations

**Annex 3. List of Laws and Regulations**

1. Anti-People Smuggling and Trafficking Act
2. Cash Courier Disclosure Act of 2007 (CCDA)
3. Child Abuse Act
4. Controlled Substances Act
5. Corporations Act
6. Corporation Regulations
7. Counter-Terrorism Act of 2007 (CTA)
8. Criminal Code
9. Criminal Procedure Code
10. Executive Order no. 218 on establishing a Money Laundering Working Group
11. Executive Order no. 246 on transfer of the FIU from the OAG to the FIC
12. Extradition and Transfer Act of 2001 (Extradition Act)
13. Financial Institutions Act of 2001, as amended in February 2008 (FIA)
14. Foreign Investment Act
15. Free Trade Zone Act of 2003
16. Money Laundering and Proceeds of Crime Act of 2001, as amended in December 2007 (MLPCA)
17. Mutual Legal Assistance Act of 2001 (MLA Act)
18. Tax Code

**Annex 4. Copies of Key Laws**

1. Money Laundering and Proceeds of Crime Act of 2001, as amended in 2007
2. Counter-Terrorism Act of 2007
3. Cash Courier Disclosure Act of 2007
4. Mutual Assistance in Criminal Matters Act of 2001
5. Extradition and Transfer Act of 2001 (Sections 1-11, 32, 33)
6. Financial Institutions Act of 2001, as amended in 2007 (Sections 1, 2, 24, 30, 40, 44, 47-49, 61-63, 79)
7. Criminal Code (Sections 101-104)

SIXTH OLBIIL ERA KELULAU RPPL No. 6-4

(Introduced as Senate Sixth Special Session, June 2001, Bill No. 6-116, SD2;  
Amendment introduced as Seventh Olbiil Era Kelulau, First Regular Session, January  
2005, amended as Senate Bill No. 7-4, SD2, HD2, CD1)

AN ACT

To amend Title 17 of the Palau National Code by the addition of Chapter 36 to be called the Money Laundering and Proceeds of Crime Act of 2001 which will establish the economic crime of money laundering as a criminal offense under the national law; to enable the Republic to identify, trace, freeze, seize, and confiscate the proceeds of serious crime and property used in the commission of a serious crime; to require financial institutions and cash dealers to establish procedures and to take prudential measures to prevent money laundering; and for other purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIIL ERA KELULAU DO  
ENACT AS FOLLOWS:

Section 1. Amendment. Title 17 of the Palau National Code is hereby amended by the addition of a new Chapter 36 to provide as follows:

"MONEY LAUNDERING AND PROCEEDS OF CRIME ACT

SUBCHAPTER 1. GENERAL PROVISIONS

Section 1. Short title. This Act shall be known and may be cited as the Money Laundering and Proceeds of Crime Act of 2001.

Section 2. Purpose. The Republic of Palau shall, by the implementation of this Act, facilitate the transparency of transactions of credit and financial institutions as defined herein, for the purposes of the detection and suppression of money laundering offenses as defined herein.

Section 3. Definition of money laundering.

(a) For the purposes of this Act, the following acts either singly or collectively shall constitute the offense of money laundering:

- (1) the conversion or transfer of property for the purpose of concealing or disguising the illegal origin of such property or assisting any person who is involved in the commission of a predicate offense to evade the legal consequences of his or her actions; or

- (2) the concealment or disguise of the illegal nature, source, location, disposition, movement, or ownership of property by any person who knows that the property constitutes the proceeds of crime as defined herein; or
  - (3) the acquisition, possession, or control of property by any person who knows that the property constitutes the proceeds of crime as defined herein.
- (b) Knowledge, intent, or purpose is required as an element of the offense of money laundering and may be inferred from objective factual circumstances.
- (c) A person need not be convicted of a predicate offense to establish that property was the proceeds of a predicate offense or to be convicted of laundering such proceeds.
- (d) The offense of money laundering is not a lesser included offense of any crime.

Section 4. Definitions. In this Act, unless the context otherwise requires:

- (a) "account" means any facility or arrangement by which a financial institution or cash dealer does any one or more of the following:
- (1) accepts deposits of currency;
  - (2) allows withdrawals of currency or transfers into or out of the account;
  - (3) pays checks or payment orders drawn on a financial institution or cash dealer by, or collects checks or payment orders on behalf of, a person;
  - (4) supplies a facility or arrangement for a safety deposit box;
- (b) "appeal" includes proceedings by way of discharging or setting aside a judgment, and an application for a new trial or for a stay of execution;
- (c) "Attorney General" means the Attorney General of the Republic of Palau;
- (d) "authorized officer" means a person or class of persons designated by the Minister of Justice or the Attorney General as an authorized officer;
- (e) "cash dealer" or "over the counter exchange dealer" means:
- (1) a person who carries on a business of an insurer, an insurance intermediary, a securities dealer or a futures broker;
  - (2) a person who carries on a business of dealing in bullion, of issuing, selling or redeeming travelers checks, money orders or similar instruments, or of collecting holding and delivering cash as part of a business of providing payroll services;

- (3) an operator of a gambling house, bingo parlor, casino or lottery, including but not limited to all forms of internet gambling; or
- (4) a trustee, or manager of a unit trust;
- (f) "confiscation" means the permanent deprivation of property by final order of the Supreme Court after all appeals are exhausted;
- (g) "crime" or "predicate offense" shall be any act committed in the Republic of Palau that is a felony, or any act committed abroad, which constitutes an offense in that country, and that would have constituted a felony had it occurred in the Republic of Palau;
- (h) "criminal organization" means any structured association having the aim of committing crimes;
- (i) "currency" means any coin or paper that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;
- (j) "document" means any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device, and any record of information, and includes:
  - (1) anything on which there is writing;
  - (2) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;
  - (3) anything from which sounds, images or writings can be produced, with or without the aid of anything else; and
  - (4) a map, plan, drawing, photograph or similar thing;
- (k) "financial institution" or "credit institution" means any bank, savings and loan institution, credit union, securities broker or dealer, or an entity or person whose primary business activity includes:
  - (1) acceptance of deposits and other repayable funds from the public;
  - (2) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
  - (3) financial leasing;
  - (4) money transmission services;

- (5) issuing and administering means of payment (such as credit cards, travelers checks and bankers drafts);
  - (6) guarantees and commitments;
  - (7) trading for their own account or for account of customers in money market instruments (such as checks, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities;
  - (8) underwriting share issues and participation in such issues;
  - (9) money-brokering;
  - (10) portfolio management and advice;
  - (11) safekeeping and administration of securities;
  - (12) credit reference services;
  - (13) safe custody services; or
  - (14) any other entity licensed by the Financial Institutions Commission as a financial institution;
- (l) "Financial Intelligence Unit" ("FIU") means the governmental agency created pursuant to section 16;
- (m) "FIC" means the "Financial Institutions Commission";
- (n) "instrumentality" means any property used or intended to be used in any manner to commit one or more criminal offenses;
- (o) "interest", in relation to property, means:
- (1) a legal or equitable estate or interest in the property;
  - (2) a right, power or privilege in connection with the property;
- (p) "money laundering offense" has the meaning provided in section 3 of this Act;
- (q) "offender" means any person legally culpable for a criminal offense under the laws of the Republic of Palau as a principal, accessory, conspirator, or co-conspirator, or a person aiding and abetting the principal as such terms are defined pursuant to 17 PNC;
- (r) "person" means any natural or legal person;



- (s) "proceeding or proceedings" means any procedure conducted by or under the supervision of a judge or judicial officer however described in relation to any alleged or proven offense, or property derived from such offense, and includes an inquiry, investigation, or preliminary or final determination of facts;
- (t) "proceeds of crime" means any property or economic advantage derived directly or indirectly from a crime;
- (u) "property" means assets, real property, or personal property of every kind, whether movable or immovable, tangible or intangible, and legal documents or instruments evidencing an interest in such assets;
- (v) "Supreme Court" means the Supreme Court of the Republic of Palau, and all its divisions;
- (w) "unit trust" means any arrangement made for the purpose or having the effect of providing, for a person having funds available for investment, facilities for the participation by the person as a beneficiary under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property pursuant to the trust.

## SUBCHAPTER II. PREVENTION OF MONEY LAUNDERING

### Section 5. Report on the use of cash and bearer securities.

- (a) Credit or financial institutions shall keep regular reports of all transactions made in cash or bearer securities of at least US \$10,000.00, or its equivalent in foreign cash or bearer securities. Such reports are required to have accurate and meaningful originator and recipient information including, but not limited to, name, address and account number. Such information must remain with the transfer or related message through the payment chain.
- (b) The US \$10,000.00 threshold in subsection (a) may be met either through a single transaction or a series of contemporaneous transactions that in the aggregate are at least US \$10,000.
- (c) Within 15 days from the date of the transaction, or as otherwise provided by regulation by the FIC, all such reports shall be provided to the FIU and FIC offices in the form and manner as set forth by the FIU or the FIC.

### Section 6. Requirement to effect domestic or international transfers of funds via credit or financial institutions.

- (a) Any transfer to or from a foreign country of moneys or securities involving a sum of at least US \$ 5,000.00 or its equivalent shall be made by or through a credit or financial institution licensed under the laws of the Republic of Palau.

(b) All transfers are required to have and maintain through the payment chain, accurate and meaningful originator and recipient information, including but not limited to, name, address, and account number.

Section 7. Financial institutions and cash dealers to verify customers' identity.

(a) Credit and financial institutions and cash dealers shall be required to verify their customers' identity and address before opening ordinary accounts or passbooks ; establishing business relations; taking stocks, bond, or other securities into safekeeping, granting safe-deposit facilities, managing assets, or effecting or receiving payments on behalf of either natural or legal persons.

(b) A natural person's identity and address shall be evidenced by the presentation of either an original official identification document that is unexpired and bears a photograph or a reasonable alternative. A copy thereof shall be taken or other adequate record shall be retained or the verification shall be retained as established by regulation by the FIC.

(c) A legal person shall be identified by the production of its articles of incorporation or charter or its equivalent or any other document establishing that it has been lawfully registered and that it is actually in existence at the time of the identification, a document establishing its address and a notarized document setting forth its directors and, wherever necessary to know the true identity of the customer, its principal owners and beneficiaries. A copy of such documents shall be taken by the credit or financial institution or the cash dealer.

(d) Natural or legal persons authorized to enter into transactions at credit or financial institutions on behalf of third parties shall produce the documents referred to in subsections (b) and (c) above for themselves and the beneficial owners.

(e) If the transaction is not face-to-face, the credit or financial institution or cash dealer shall require a notarized identification from the customer's local bank. If, however, the local bank is located in, or a branch office of the bank is located in a Non-Cooperative Countries and Territories jurisdiction as that term is defined by the Financial Action Task Force on Money Laundering, the non-face-to-face transaction shall not be completed.

(f) Credit and financial institutions and cash dealers shall, to the extent not already done, verify their existing customer's identity and address.

(g) Credit and financial institutions and cash dealers shall identify and verify their customers where the institution has doubts about the veracity or adequacy of previously obtained customer identification.

(h) Credit and financial institutions and cash dealers shall not establish any business relationship with or complete any financial transaction for any anonymous person or entity or for any person or entity using a false or fictitious name.

(i) If a prospective or existing customer is either unwilling to provide the documentation required in this section or the credit or financial institution or cash dealer is unable to resolve doubts about the prospective or existing customer's identity, the credit or financial institution or cash dealer shall not open the account and shall file a suspicious transaction report as specified in section 20 and its accompanying regulations.

Section 8. Licensing and regulations concerning alternative remittance systems.

(a) All persons, and their agents, that provide a service for the transmission of money or value, including transmission through an alternative remittance system or informal money or value transfer system or network (hereinafter referred to as "Alternative Remittance Systems"), shall be required to be licensed by the Financial Institutions Commission of Palau. The FIC shall promulgate such regulations as may be necessary for the proper licensing and regulation of such Alternative Remittance Systems, and such regulations shall become effective in accordance with 6 PNC § 127. Persons licensed under other provisions of this Act need not be licensed pursuant to this section.

(b) Alternative Remittance Systems shall keep regular reports of all transactions made in cash or bearer securities in excess of US \$1,000.00, or its equivalent in foreign cash or bearer securities. Such reports are required to have accurate and meaningful originator and recipient information including, but not limited to, name, address and account number. Such information must remain with the transfer or related message through the payment chain. Alternative Remittance Systems are required to pay special attention to all complex, unusually large transactions, or unusual patterns of transactions, that have no apparent economic or lawful purpose, to examine as far as possible the background and purpose of such transactions, to set forth their findings in writing, and provide such findings to the FIU upon completion. Alternative Remittance Systems are required to follow the requirements of Section 12 of this Act as if they were a financial institution.

(c) Within 15 days from the date of the transaction, or as otherwise provided by regulation by the FIC, all reports required by section 8(b) shall be provided to the FIU and FIC offices in the form and manner as set forth by the FIU or FIC.

SUBCHAPTER III. TRANSPARENCY IN FINANCIAL TRANSACTIONS

Section 9. Identification of casual customers of Financial Institutions.

(a) Casual customers of financial institutions shall be identified, in the manner specified in section 7 in the case of any transaction involving a sum of at least the equivalent of US \$10,000.00. If the amount of the transaction is unknown at the time of

the operation, the customer shall be identified as soon as the threshold becomes known or is reached by the transaction.

(b) Identification of casual customers pursuant to this section shall also be carried out in cases where the customer's separate transactions are conducted in a manner that reasonably appears to have an unlawful criminal purpose; in that case, the credit or financial institution shall submit a confidential report as described in section 10 to the FIU and the Office of the Attorney General pursuant to section 19.

Section 10. Identification of beneficial owners. If, in the opinion of the credit or financial institution, it is uncertain whether a customer is acting on his or her own behalf, the credit or financial institution shall seek information by any legal and reasonable means to ascertain the true identity of the principal or party on whose behalf the customer is acting. If good faith attempts by credit and financial institutions to verify the identity of any beneficial owner and the true identity of the beneficial owner have doubtful results, the banking relationship shall be terminated, without prejudice to the credit or financial institution.

Section 11. Special monitoring of certain transactions.

(a) Where a credit or financial institution, cash dealer, or alternative remittance system has reasonable grounds to suspect that a transaction involves funds that are derived from, related to, or are the proceeds of a crime, the credit or financial institution, cash dealer, or alternative remittance system shall immediately provide information as to the origin and destination of the money, the purpose of the transaction, and the identity of the transacting parties to the FIU as required in section 20. The report shall be maintained by the credit or financial institution, cash dealer, or alternative remittance system as specified in section 12.

(b) Transactions that involve business relations or transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism should be given special attention by all credit and financial institutions, cash dealers, and alternative remittance systems. Credit and financial institutions, cash dealers, and alternative remittance systems are required to pay special attention to all complex, unusually large transactions, or unusual patterns of transactions, that have no apparent economic or lawful purpose, to examine as far as possible the background and purpose of such transactions, the origin and destination of the money, and the identity of the transacting parties. All credit and financial institutions, cash dealers, and alternative remittance systems are required to set forth their findings in writing, and retain such record pursuant to section 12.

Section 12. Record-keeping by credit and financial institutions. Credit and financial institutions shall maintain and hold at the disposal of the authorities:

(a) records of customer identification for five years after the account has been closed or the relations with the customer have ended; and

(b) records of transactions conducted by customers that fall under section 5 and the reports provided for in section 11 for five years following execution of the transaction.

Section 13. Communication of information.

(a) The confidential information and records referred to in sections 7, 9 and 10 shall be delivered to the FIU and the Office of the Attorney General upon the application of the Office of the Attorney General or the FIU to the Supreme Court, Trial Division, for an order allowing the FIU or the Office of the Attorney General or both to examine the contents of confidential reports and records of a credit or financial institution based upon a finding of probable cause; provided, however, that the FIU or FIC may review such records as part of the compliance audit. The Court's order shall further specify with particularity the documents to be produced or delivered by the reporting party. Such application shall be made pursuant to an investigation by the FIU for the detection and suppression of money laundering or predicate offenses.

(b) Upon an ex parte showing of probable cause, the Supreme Court shall order the credit or financial institution or cash dealers, or alternative remittance systems to produce and deliver the abovedescribed confidential reports and records. When exigent circumstances exist, the Office of the Attorney General or the FIU may make the aforesaid application for an order via telephonic exchange with any sitting Justice of the Supreme Court at any time. The Office of the Attorney General's or FIU's written affirmation of the Court's oral order for production shall be transmitted to the reporting party immediately, either by facsimile or by any other written means.

(c) Notwithstanding the foregoing, the Office of the Attorney General or the FIU shall follow up the aforesaid request with a sworn written application to the Court for the order by the close of business on the next business day following receipt by the reporting party of the Court's oral order directing the production and delivery of reports and records. Should the Office of the Attorney General or the FIU fail to submit the written application by the close of business on the business day following the issuance of the Order all the confidential reports and records shall be returned to the credit or financial institution, cash dealers, or alternative remittance systems and any copies shall be destroyed immediately by the FIU and the Office of the Attorney General.

(d) Upon receipt of confidential information by the Office of the Attorney General or the FIU pursuant to this section, the Ministry of Justice, FIU, the Office of the Attorney General, and all related employees and agencies shall be prohibited from disclosing or making known the existence and content of the information received, except as provided in section 17 and 19. Under no circumstances shall persons be required to transmit the above information and reports, nor shall any other individual having knowledge thereof be required to communicate such information or reports to any natural or legal person other than those specified in subsection (a).

Section 14. Internal anti-money-laundering programs at credit and financial institutions.

(a) Credit and financial institutions shall develop written policies and procedures, to the extent such programs and procedures do not currently exist, for the prevention of money laundering. Such programs shall include the following:

- (1) Centralization of information on the identity of customers, principals, beneficiaries, authorized agents, and beneficial owners, and regarding suspicious transactions;
- (2) Designation of compliance officers, at central management level, in each branch and at each agency or local office;
- (3) On-going training for officials or employees;
- (4) Internal audit arrangements to check compliance with and effectiveness of the measures taken to implement this Act;

(b) The FIC shall conduct random compliance audits to assess compliance with this Act. Any credit or financial institution that fails to comply with the requirements of sections 5, 7, 8, 9, 10, 11, 12, 13, 14, or 20 are subject to remedial provisions, including fines, as provided for in regulations promulgated pursuant to this Act. Any credit or financial institution that repeatedly fails to comply with the requirements of sections 5, 7, 8, 9, 10, 11, 12, 13, 14, or 20 may have a fine imposed, or their license suspended or revoked, by the FIC after a hearing by the FIC Board.

Section 15. Over-the-counter exchange dealings. Natural or legal persons whose sole occupation is that of an over-the-counter exchange dealer and who are not otherwise licensed by the FIC as a financial institution shall be required to do the following:

- (a) Before commencing to do business in the Republic of Palau, to submit a declaration of activity to the Minister of Justice for the purpose of obtaining a license to establish and operate an over-the-counter exchange dealer business, as provided for under the applicable laws of Palau, and, in that declaration, to furnish proof of the lawful origin of the capital required to establish the business;
- (b) To verify the identity of their customers, by requiring the presentation, prior to any transaction involving a sum greater than the equivalent of US \$2,500.00 or, in the case of any transaction conducted in conditions of unusual or unjustified complexity, of an official original document of identification of the customer that is unexpired and bears a photograph, a copy of which shall be taken.
- (c) To record, in chronological order, all transactions, their nature and amount, indicating the customer's complete name, such information to be maintained, in a register numbers and signed by the competent administrative officer of the business, and to retain such register for five years after the last transaction is recorded.

#### SUBCHAPTER IV. DETECTION OF MONEY LAUNDERING

Section 16. Cooperation with anti-money-laundering authorities.

(a) A Financial Intelligence Unit ("FIU") shall be created within the Office of the Attorney General or the Financial Institutions Commission by Executive Order of the President. Other agencies of the government may be assigned to assist the FIU by the President at the request of the FIU. The FIU, in consultation with the President of the Republic of Palau, may promulgate regulations pertaining to the duties and functions of the FIU pursuant to the Administrative Procedure Act, 6 PNC Chapter 1.

(b) The FIU members shall be required to keep confidential any information obtained within the scope of their duties, even after cessation of those duties with the FIU. Such information may not be used for any purposes other than those provided for by this Act.

(c) The FIU members may not concurrently hold or pursue any elective office in the Palau National Government or any State Government and may not hold any other private employment.

(d) The FIU shall receive the reports transmitted by the persons referred to in sections 11 and 20. The FIU shall analyze the reports on the basis of the information at its disposal and shall gather, in particular from organizations and government ministries and agencies involved in combating organized crime, any additional information that may help to establish the origin of the funds or the nature of the suspect transactions forming the subject of the reports.

(e) The reports required of the persons referred to in section 20 shall be sent to the FIU by any rapid means of confidential communication. The FIU shall confirm in writing receipt of any reports received and of money laundering trends.

(f) Upon the effective date of this Act, an annual report shall be submitted by the FIU to the President and the Olbiil Era Kelulau. The report shall provide an overall analysis and evaluation of the reports received and of money laundering trends.

Section 17. General provisions.

(a) The FIU shall be responsible for receiving, analyzing, and processing reports required pursuant to this Act. All officials, employees, and agents of the national government or any other government shall keep confidential the information thus obtained, which may not be used for any purposes other than those provided for in this Act.

(b) The FIU may, upon suspicion of money laundering, terrorist financing, or a predicate offense, disseminate such information to domestic authorities as it deems necessary.

Section 18. Access to information. The FIU may also obtain from any public authority or from any natural or legal person information and records within the scope of

investigations conducted following the report of a suspicion of illegal activities as set forth in section 24. The FIU shall, upon request, be granted reasonable access to databases of all public authorities. In all cases, the use of information thus obtained shall be limited to the purposes of this Act.

Section 19. Relationships with foreign financial intelligence units abroad.

- (a) The FIU may enter into reciprocal arrangements with foreign financial intelligence units, or other law enforcement agencies, for the formal exchange of financial intelligence information,, provided that such arrangements are governed by confidentiality requirements substantially similar to those set forth in this Act.
- (b) The FIU, subject to a reciprocal arrangement with foreign financial intelligence units, shall exchange information on a peer to peer basis with financial intelligence units of foreign countries responsible for receiving and processing reports of money laundering, provided that such exchanges are governed by confidentiality requirements substantially similar to those set forth in this Act.
- (c) Upon receipt of a request for information or transmission from a counterpart foreign financial intelligence unit, the FIU may comply with that request within the scope of the powers set forth in the reciprocal agreement, so long as such compliance is not in conflict with Palau law.

Section 20. Requirement to report suspicious transactions.

- (a) Any credit and financial institutions, financial intermediaries, over-the-counter exchange dealer as defined in section 15, cash dealer, alternative remittance system, or other natural or legal person subject to sections 5-11, shall be required to report to the FIU transactions referred to in section 11. The persons referred to in this section shall be required to report the transactions carried out even if it was not feasible to defer their execution or if it became clear only after completion of a transaction that it involved a money laundering offense or terrorist financing. Any natural or legal person referred to in this subsection shall also be required to report without delay any information that might confirm or invalidate the suspicion of a violation of section 3.
- (b) Reports of suspicions of violations of section 3 shall be transmitted to the FIU by a confidential communication in writing. Reports of suspicions of violations communicated by telephone shall be confirmed by a confidential communication in writing within the shortest reasonable time. Such reports shall, as appropriate, indicate:
  - (1) the reasons why the transaction was executed; or
  - (2) the time limit within which the transaction is to be executed. The FIU shall immediately acknowledge receipt of such reports by confidential written communication to the reporting party.



Section 21. Stop notice on incomplete transactions.

(a) If the FIU or the Office of the Attorney General considers it necessary, the FIU or the Office of the Attorney General shall petition the Supreme Court for an order to stop the execution of a transaction. Upon an ex parte showing of probable cause, the Supreme Court shall order stoppage of the transaction. When exigent circumstances require it, the FIU or the Office of the Attorney General may make the petition for an order via telephonic communication with any sitting Justice of the Supreme Court at any time.

(b) Following a telephonic request pursuant to subsection (a), the Office of the Attorney General or the FIU shall submit a sworn written application to the Court on the next business day after issuance of the Court's oral order directing the stoppage. The Court's order stopping the transaction shall be transmitted to the reporting party immediately, either by facsimile or by any other written means. The stop notice order shall defer the execution of the transaction for a period not to exceed 72 hours. Should the Office of the Attorney General or the FIU fail to submit the written application as required herein, after issuance of the Court's stop notice order, the transaction may be completed.

(c) To extend the stoppage of the transaction, the Office of the Attorney General or the FIU must immediately notify all parties to the transaction by facsimile and simultaneously move the Court for an order allowing an extension of the stoppage for an additional period not to exceed eight (8) days. Upon receipt of the motion, the Court shall order an expedited hearing to be held within the shortest possible time after actual notice of the motion to all parties.

Section 22. Exemption from liability for bona fide reporting of suspicions.

(a) No cause of action, suit, or other judicial proceeding for breach of banking or professional secrecy may be instituted against a person who in good faith has carried out a transaction which later is determined to be a suspect transaction or money laundering offense or has transmitted information or submitted a report pursuant to this Act.

(b) No civil or criminal action may be brought, nor any professional sanction taken, against any person who in good faith transmits information or submits reports pursuant to this Act, even if the investigation or judicial decision do not give rise to a charge for any offense.

(c) No civil or criminal action may be brought against any person by reason of any material or non-material loss or economic or non-economic damage of any kind resulting from the freezing of a transaction or the reporting of suspicious transactions or possible violations or other wrongdoing as contemplated by this Act.

Section 23. Exemption from liability arising out of the execution of transactions.

(a) In cases where a suspect transaction has been carried out and unless the Supreme Court has determined that there is probable cause to believe there was a conspiracy with the perpetrator or perpetrators of the money laundering offense, no criminal proceedings in respect of money laundering may be brought against any person who, in connection with his, her, or its trade or occupation, carried out or gave advice regarding the suspect transaction .

(b) The foregoing exemption of liability shall only apply if a person subject to this Act carries out any transaction at the request of the FIU or the Office of the Attorney General acting pursuant this Act.

Section 24. Special investigative techniques. In the course of an investigation, the FIU or the Office of the Attorney General may:

- (a) monitor bank accounts;
- (b) access computer systems, networks, and servers;
- (c) place under surveillance or tap telephone lines, facsimile machines, or electronic transmission or communication facilities;
- (d) electronically record acts and behavior or conversations; and
- (e) inspect communications of notarial and private deeds or of bank, financial, and commercial records.

The Supreme Court may also order the seizure of the aforementioned documents. These operations (subsections a-e as set forth in this section) shall be possible only when the aforesaid evidence exists which constitutes probable cause for suspecting that such accounts, telephone lines, computer systems and networks, or documents are or may be used by persons suspected of participating in offenses referred to in section 3. Absent exigent circumstances, these operations (subsections a-e as set forth in this section ) shall be permitted only pursuant to a warrant issued by the Supreme Court. All investigations and applications for hearing for the above orders shall be filed under seal and kept confidential unless and until charges constituting crimes in the Republic of Palau are brought against suspected parties. Where appropriate, the Court may order that the charges remain under seal until all related investigations have been completed.

Section 25. Undercover operations and controlled delivery. No punishment may be imposed on officials competent to investigate the money laundering offenses who, for the sole purpose of obtaining evidence relating to offenses referred to in this Act, perform, in the manner specified herein, acts which might be construed as elements constituting any of the offenses referred to in this act. The authorization of the Supreme Court shall be obtained prior to any operation as described in sections 13 and 24. A detailed report in the form of a sworn affidavit by the officer supervising the investigation shall be transmitted to the Supreme Court upon application for any further order to the Court

which may include allowing the officials charged with investigating the money laundering offenses to carry out such operations, including the delay of, freezing or seizure of money or any other property, until the investigation has been completed and, if necessary, order specific measures for the safekeeping of such property. However, money, assets, and property shall not be frozen for any period in excess three (3) months after seizure or freezing, absent a conviction for the crimes under investigation, without a further application being made to the Supreme Court. The Supreme Court may extend the seizure or freezing of such assets for one or more additional three-month periods upon a showing of good cause by the Office of the Attorney General or the FIU.

Section 26. Disallowance of bank secrecy. Banking or professional secrecy may not be invoked as grounds for refusal to provide information referred to in section 12 or required in connection with an investigation which relates to money laundering and is ordered by or carried out pursuant to an order of the Supreme Court.

Section 27. Seizure. Subject to the requirements of 18 PNC, all members of Palau's law enforcement agencies responsible for the detection and suppression of money laundering offenses shall be empowered to seize property connected with the offense under investigation, as well as any evidentiary items that may make it possible to identify such property.

Section 28. Provisional measures. The Supreme Court may upon motion of the Office of the Attorney General or the FIU issue a temporary order, at the expense of the national government, freezing capital and financial transactions relating to property of whatsoever nature that is liable to seizure or confiscation under this Act. The lifting of those measures may be ordered at any time at the request of the Office of the Attorney General or the FIU or upon motion of the beneficial owner to the Supreme Court. However, any capital, property, transactions, money, or other assets seized or confiscated and not adjudicated by the Court to be the fruit of the crime of money laundering may not be seized or confiscated for any period in excess of three (3) months, after a seizure or confiscation, absent a conviction for the crimes under investigation, without a further application being made to the Supreme Court. The Supreme Court may extend the seizure or confiscation of such assets for one or more additional three-month periods upon a showing of good cause by the Office of the Attorney General or the FIU.

Section 29. Money laundering penalties. Any natural person convicted of violating section 3 as a principal, involving proceeds of crime having a total value of less than \$2,500.00, shall be fined not more than double the amount laundered or attempted to be laundered, or imprisoned for not more than one year and one day, or both. Any natural person convicted of violating section 3 as a principal, involving proceeds of crime having a total value of \$2,500.00 or more, shall be fined not less than \$5,000.00, nor more than double the amount laundered or attempted to be laundered, whichever is greater, or imprisoned for not more than ten years, or both. Any natural person convicted for being an accessory to a violation of section 3 shall be punished pursuant to 17 PNC 103. Any natural person convicted of attempting to violate section 3 shall be punished pursuant to 17 PNC 104. Any natural person found guilty of aiding and abetting a violation of

section 3 shall be punished pursuant to 17 PNC 102. Any natural person found guilty of conspiracy to violate section 3 shall be punished pursuant to 17 PNC 901.

Section 30. Penalties applicable to corporate entities. Corporate entities, other than the National Government of the Republic of Palau, on whose behalf or for whose benefit a money laundering offense has been committed by one of their agents or representatives shall be fined in an amount equal to two times the fines specified for natural persons, without prejudice to the conviction of those individuals as perpetrators of the offense or accessories to it. In the case where a corporate entity's agents or representatives, on the entity's behalf or benefit are convicted of three or more offenses under section 3 within a five-year period, such entity may be:

- (a) permanently or for a minimum of five years banned from directly or indirectly carrying on the business activities in the Republic of Palau for which they are licensed or conducted at the time of the offense;
- (b) ordered to close permanently or for a minimum of five years their premises which were used for the commission of the offense; or
- (c) required to publicize the judgment in the press or by radio or television.

Section 31. Civil penalties. Any person who fails to comply with sections 5, 6, 7, 8, 9, 10, 12, 14, 15, or 20 shall, upon conviction therefor on the basis of clear and convincing evidence, be subject to a civil penalty not to exceed US \$50,000.00 upon application by the Office of the Attorney General or the FIU. The rules governing adjudicative proceedings under the Administrative Procedure Act, 6 PNC Chapter 1, shall not apply to this section.

Section 32. Penalties for other offenses.

(a) A penalty of not more than two years' imprisonment or a fine not to exceed US \$10,000.00 shall be imposed on:

- (1) persons and directors or employees of organizations that carry out or advise on operations involving deposits, exchange operations, investments, conversions, or any other movements of capital, and in particular to credit and financial institutions and financial intermediaries, who knowingly disclose, to the owner of the sums or to the principal of the transactions specified in that section, a report which they are required to make or the action taken on it as specified in sections 11, 13, 20, and 25;
- (2) anyone who knowingly destroys or removes registers or records which are maintained pursuant to sections 11, 12, or 15;
- (3) anyone who under a false identity performs or attempts to perform any of the operations specified in sections 5, 6, 7, 8, 9, 10, 11 or 15;

(4) anyone who, having learned by reason of his or her trade or occupation of an investigation into a case of money laundering, knowingly discloses that fact, by any means, to the person or persons to whom the investigation relates;

(5) anyone who knowingly communicates deeds or records specified in section 24(e) to the FIU or Office of the Attorney General or to the officials competent to investigate the offenses, knowing such deeds or records to contain material errors or omissions, without informing them of that fact;

(6) anyone who upon a reasonable suspicion fails to report, pursuant to section 20, in cases where the circumstances of the transaction admit the conclusion that the money was derived from one of the offenses referred to in section 20.

(b) Persons found guilty of any offense or offenses set forth in subsection (a) may also be banned permanently or for a minimum of five years from pursuing the trade or occupation which provided the opportunity for the offense to be committed.

### Section 33. Confiscation.

(a) In the event of a conviction for actual or attempted money laundering, an order shall be issued by the Supreme Court for the confiscation of the property forming the subject of the offense, including income and other benefits obtained therefrom, against any person to whom they may belong, unless the owner can (1) establish the absence of any connection between such property, income, and other benefits and the predicate or money laundering offense and (2) establish that the owner was a bona fide purchaser for value acquired the property in return for the provision of services corresponding to its value or the owner did not acquire the property on any other legitimate grounds. The confiscation order shall specify the property with particularity and contain the necessary details to identify and locate it.

(b) In the event of a conviction for actual or attempted money laundering, an order may additionally be issued for the confiscation of the property of the convicted offender in an amount equal to the enrichment obtained by the convicted offender during a period of three years preceding the conviction unless the convicted offender can establish the absence of any connection between such enrichment and the predicate or money laundering offense. The confiscation order shall specify the property with particularity and contain the necessary details to identify and locate it.

Section 34. Confiscation of property of criminal organizations. In the event the Supreme Court has determined beyond a reasonable doubt, that an individual convicted of an offense under this Act is a member of a criminal organization, the property over which a criminal organization has power of disposal shall be confiscated unless the lawful origin of the property is established by the organization.

Section 35. Avoidance of certain legal instruments. Any instrument, the purpose of which is to fraudulently convey property and keep it from confiscation, shall be voidable upon a determination by the Supreme Court that the instrument has been done for fraudulent purposes.

Section 36. Disposal of confiscated property.

(a) Confiscated property and proceeds under this Act shall accrue and be forfeit to the Republic of Palau, which property and proceeds shall be delivered to the general fund of the Republic after the auction sale of such property. Said confiscated property shall remain encumbered, up to its value, by any rights in rem lawfully established in favor of third parties.

(b) In cases where confiscation is ordered under a judgment by default, the confiscated property shall accrue to the Republic of Palau and be liquidated in accordance with law. However, if the Supreme Court, ruling on an application to set aside such judgment, acquits the person prosecuted, it shall order that the Republic of Palau pay full and fair restitution for the value of the confiscated property, unless it is established beyond a reasonable doubt that such property is the proceeds of crime committed in Palau. The Republic of Palau shall not be liable for any exemplary or consequential damages as a result of the sale of confiscated property.

Section 37. Applicable law for rulemaking and regulations. The Administrative Procedure Act, 6 PNC Chapter 1, shall apply for all rules and regulations promulgated under this Act, unless otherwise specified.

Section 38. Cultural traditions exempted from compliance with this Act. This Act shall not apply to bona fide transfers or exchanges of property pursuant to recognized cultural traditions and customs of Palau."

Section 2. Amendment. The Content Section of RPPL 6-4 so hereby amended so that the Section numbers, titles, and page numbers coincide with the changes made in Section 1 of this Act.

Section 3. Effective date. This Act shall take effect upon its approval by the President of the Republic, or upon becoming law without such approval.

Approved this 19th day of June, 2001.

Amendments passed: December 01, 2007

Amendments approved by Tommy E. Remengesau, Jr., President of the Republic of Palau on December 19, 2007

SEVENTH OLBIIIL ERA KELULAU

RPPL No. 7-28

First Regular Session, January 2005 (Re: Senate Bill No. 7-23, SD2, HD1)

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AN ACT

To enact a new law to prohibit terrorism in accordance with: United Nations Security Council Resolution 1373 calling for international cooperation to combat threats of international peace and security caused by terrorist acts; the Special Recommendations on Terrorist Financing issued by the Financial Action Task Force on Money Laundering; the international terrorism conventions to which Palau has become a party; and for other related purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIIIL ERA KELULAU DO ENACT AS FOLLOWS:

CHAPTER 1

TERRORISM

Subchapter I

General Provisions

Section 1. Findings and purpose. The Olbiil Era Kelulau finds that the world-wide escalation of terrorism in all its forms and manifestations endangers and takes innocent human lives, jeopardizes fundamental freedoms, and seriously impairs the dignity of human beings. Everyone has the right to life, liberty, and security of person. The United Nations Security Council Resolution 1373 of September 28, 2001 mandates that all UN member States take specific and immediate measures to prohibit and criminalize the financing of terrorism. The Special Recommendations on Terrorist Financing issued by the Financial Action Task Force on Money Laundering on October 31, 2001, as amended, also calls for taking action to detect, prevent, and suppress the financing of terrorism. The enactment of counter-terrorism legislation is necessary in order to protect the rights of individuals to live in peace, freedom, and security and to fulfill the mandate for enhanced international cooperation to combat terrorism. The Olbiil Era Kelulau enacts this legislation for the purpose of implementing into the national law the international terrorism conventions to which Palau is a party, and relevant criminal provisions of related international conventions, the United Nations Security Council Resolutions 1373 and 1526, and the Financial Action Task Force Special Recommendations on Terrorist Financing. This legislation creates a comprehensive legal framework covering all aspects of terrorism, both domestic and international, dedicated to the prevention, repression, and elimination of terrorism in all its forms and manifestations in Palau.

Section 2. Short title. This Act shall be called the “Counter-Terrorism Act of 2007.”

Section 3. Definitions. For the purposes of this Act:

(a) “alleged offender” means a person as to whom there is sufficient evidence to determine *prima facie* that such person has engaged in terrorism or any person who is listed by the United Nations 1267 Sanctions Committee, listed on the Committee List as referenced in the United Nations Security Resolution 1526, listed on any such list officially adopted or approved by the United Nations Security Council, or listed under United States Executive Order 13224.

(b) “biological agent” means any micro-organism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bio-engineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing:

- (1) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;
- (2) deterioration of food, water, equipment, supplies, or material of any kind; or
- (3) deleterious alteration of the environment.

(c) “biological weapon” means the following, together or separately, a:

- (1) biological agent;
- (2) toxin; or
- (3) delivery system;

that has been developed, produced, transferred, acquired, retained, or possessed for use as a weapon; provided, however, for purposes of this section, the term “for use as a weapon” does not include the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin or delivery system for prophylactic, protective, or other peaceful purposes.

(d) “chemical weapon” means, together or separately:

- (1) a toxic chemical and its precursors, except where intended for a purpose not prohibited by law, as long as the type and quantity is consistent with such purpose;
- (2) a munition or device, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in sub-subsection (1) of this subsection, which would be released as a result of the employment of such munition or device; or
- (3) any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in sub-subsection (2).

(e) “continental shelf” means the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance; and as extended by law.

(f) “crime(s) established by this Act” means:

- (1) the terrorist act offense established by Section 5 under the General Provisions of Subchapter I;
- (2) the offenses established under other subchapters of this Act giving effect to the criminal provisions of the international terrorism conventions, including: financing of terrorism (section 23); weapons of mass destruction offenses (section 28); internationally protected persons offenses (section 30); hostage-taking offenses (section 32); terrorist bombing offenses (section 34); plastic explosive offenses (section 36); civil aviation offenses (section 38); maritime offenses (section 44); nuclear material offenses (section 45); or

(3) the criminal complicity and inchoate offenses established by subsection (c) of Section 6.

(g) “delivery system” means, with respect to biological weapons:



(1) any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or

(2) any vector.

(h) “engage(s) in” with respect to terrorist acts, terrorism offenses, and terrorism, means in an individual capacity or as a member of an organization:

(1) to perpetrate, commit, or carry out or to incite to commit or carry out;

(2) to threaten, attempt, solicit, or conspire to carry out or commit;

(3) to prepare or plan;

(4) to gather information on potential targets for;

(5) to solicit, collect or provide property or other things of value, with the knowledge or intention that the property or other things of value will be used:

(i) for terrorism; or

(ii) by a terrorist organization;

(6) to solicit, recruit, or train any person:

(i) to engage in terrorism;

(ii) to engage in conduct otherwise described in this section or prohibited by this Act; or

(iii) for membership in a terrorist organization; or

(7) to commit or carry out an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, property, transfer of property or other material benefit, false documentation or identification, weapons, including, without limitation, chemical, biological, or radiological weapons, explosives, or training:

(i) for terrorism;

(ii) to any individual who the actor knows, or reasonably should know, engages in terrorism; or

(iii) for a terrorist organization.

(i) “fixed platform” means an artificial island, installation, or structure permanently attached to the seabed for the purpose of exploration or exploitation of resources or for other economic purposes;

(j) “foreign national” means a natural person who is neither a citizen or a national of the Republic of Palau;

(k) “foreign State” means:

(1) any country other than the Republic of Palau; and

(2) every constituent part of such country, including a territory, dependency or protectorate which administers its own laws;

(l) “foreign government” means any foreign State or nation, or any agency, instrumentality or political subdivision of any such government or nation, whether or not it is engaging in legal activities or is operating legally or in a lawful manner.

(m) “freeze” means to prohibit the transfer, conversion, disposition, or movement of funds or other assets on the basis of, and for the duration of the validity of, an action initiated by a competent authority or a court under a freezing mechanism.

(n) “property” means real and personal property of every kind whatsoever.

(o) “in flight” means, with respect to aircraft, at any time from the moment when all the external doors are closed following embarkation until the moment when any such door is opened for disembarkation; provided, however, in the case of a forced landing, the flight shall be deemed

to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;

(p) “in service” means, with respect to aircraft, from the beginning of the pre-flight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; and, the period of service shall, in any event, extend for the entire period during which the aircraft is in flight;

(q) “international terrorism conventions” means and includes:

(1) The “Convention on Offences and Certain Other Acts Committed on Board Aircraft”, convened in Tokyo on September 14, 1963 (deposited with the International Civil Aviation Organization);

(2) The “Convention for the Suppression of Unlawful Seizure of Aircraft”, convened at The Hague on December 16, 1970 (deposited with the International Civil Aviation Organization);

(3) The “Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation”, convened in Montreal on September 23, 1971 (deposited with the International Civil Aviation Organization);

(4) The “Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents”, adopted by the General Assembly of the United Nations on December 14, 1973 (deposited with the Secretary-General of the United Nations);

(5) The “International Convention against the Taking of Hostages”, adopted by the General Assembly of the United Nations on December 17, 1979 (deposited with the Secretary-General of the United Nations);

(6) The “Convention on the Physical Protection of Nuclear Material”, opened for signature in New York and Vienna on March 3, 1980 (deposited with the Director General of the International Atomic Energy Agency);

(7) The “Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, at convened in Montreal on February 24, 1988, and supplementary to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation” (deposited with the International Civil Aviation Organization);

(8) The “Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation”, convened in Rome on March 10, 1988 (deposited with the International Maritime Organization);

(9) The “Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf”, convened in Rome on March 10, 1988 (deposited with the International Maritime Organization);

(10) The “Convention on the Marking of Plastic Explosives for the Purpose of Detection”, convened in Montreal on March 1, 1991 (deposited with the International Civil Aviation Organization);

(11) The “International Convention for the Suppression of Terrorist Bombings”, adopted by the General Assembly of the United Nations on December 15, 1997 (deposited with the Secretary-General of the United Nations);

(12) The “International Convention for the Suppression of the Financing of Terrorism”, adopted by the General Assembly of the United Nations on December 9, 1999 (deposited with the Secretary-General of the United Nations); and

(13) Any conventions regarding terrorism to which Palau becomes a State Party.

(r) “internationally protected person” means and includes:

(1) a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister of Foreign Affairs, whenever any such person is in a foreign State, as well as members of such person's family who accompany him or her;

(2) any representative or official of the Republic of Palau or of a foreign State, or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against such person, the person's official premises, private accommodation or means of transport is committed, is entitled pursuant to international law to special protection from any attack on his or her person, freedom or dignity, as well as members of such person's family forming part of the person's household;

(s) “infrastructure facility” means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications;

(t) “key component of a binary or multi-component chemical system” means, with respect to precursors and chemical weapons, the precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multi-component system;

(u) “Minister of Justice” means the Minister of Justice of the Republic of Palau, and includes any person to whom the Minister of Justice delegates authority to carry out the duties and responsibilities of the Minister of Justice established by this Act;

(v) “nuclear material” has the same meaning as defined in the Convention on the Physical Protection of Nuclear Material;

(w) “Palau” means the Republic of Palau, and every part of the territory of Palau, including the marine space and the territorial sea and the airspace above the territory of Palau, and also includes all governments of Palau;

(x) “person” means and includes both natural and legal persons and any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, whether or not it is engaging in legal activities or is operating legally and in a lawful manner;

(y) “place of public use” means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public;

(z) “plastic explosive” means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form has a vapor pressure less than 10<sup>-4</sup> Pa at a temperature of 25°Celsius, is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature;

(aa) “precursor” means, with respect to chemical weapons, any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multi-component chemical system;

(bb) “proceeds” means any property derived from or obtained, directly or indirectly, through or from terrorism;

(cc) “public transportation system” means all facilities, conveyances, and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo;

(dd) “purpose not prohibited by law” with respect to chemical weapons, means:

(1) industrial, agricultural, research, medical, pharmaceutical, or other peaceful purposes;

(2) protective purposes directly related to protection against toxic chemicals and to protection against chemical weapons;

(3) military purposes of Palau that is not connected with the use of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm; and

(4) law enforcement including domestic riot control purposes;

(ee) “ship” means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles, or any other floating craft;

(ff) “serious bodily injury” means physical pain, illness or any impairment of physical condition that creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ;

(gg) “serious offense” means any act committed in Palau that is punishable by a period of imprisonment of more than one year and any act committed abroad, which constitutes a felony if it had been committed in the Palau.;

(hh) “state or government facility” means any permanent or temporary facility or conveyance that is used or occupied by representatives of a country, members of government, the legislature, or the judiciary, or by officials or employees of a country or any other public authority or entity, or by employees or officials of an intergovernmental organization in connection with their official duties;

(ii) “substantial property damage” means damage in an amount exceeding \$10,000;

(jj) “terrorism” means terrorism offenses and terrorist acts;

(kk) “terrorism offense” means:

(1) any crime established by this Act;

(2) any crime established by the Palau National Code and declared to be a terrorism offense by the Olbiil Era Kelulau;

(3) any crime established by an international terrorism convention;

(4) any crime recognized under international humanitarian law as a terrorism offense; and

(5) any crime established under the law of a foreign State, where such crime, if committed in Palau, would constitute a terrorism offense under the Palau National Code;

(ll) “terrorist” means a person who engages in terrorism;

(mm) “terrorist act” means any act that is intended, or by its nature or context can be reasonably regarded as intended, to advance political, ideological, or religious causes, by intimidating the public or any portion of the public, or by compelling or attempting to compel a government or an international or regional organization to do or refrain from doing any act, and:

(1) involves the seizing or detaining, and threatening to kill, injure, harm, or continue to detain, another person;

(2) endangers the life of any person;

(3) creates a risk to the health or the safety of the public, or to any portion of the public;

- (4) endangers the national security or national defense of any country;
- (5) involves substantial damage to property;
- (6) involves the hijacking, seizure or sabotage of any conveyance (including an aircraft, vessel, ship, or vehicle), or of any fixed platform attached to the continental shelf;
- (7) involves any act that is designed to disrupt or destroy an electronic system, including, without limitation:

- (i) an information system;
- (ii) a telecommunications system;
- (iii) a financial system;
- (iv) a system used for the delivery of essential government services;
- (v) a system used for, or by, an essential public utility; or
- (vi) a system used for, or by, a transport system; or

- (8) involves any act that is designed to disrupt the provision of essential emergency services such as the police, civil defense, or medical services;

(nn) “terrorist organization” means a group composed of two or more persons, whether organized or not, that engages in terrorism;

(oo) “toxic chemical” means any chemical which through its chemical action on life processes can cause death, temporary incapacitation, or permanent harm to humans or animals, and includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions, or elsewhere;

(pp) “toxin” means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

- (1) any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or
- (2) any poisonous isomer or biological product, homolog, or derivative of such a substance;

(qq) “vector” means, with respect to delivery systems and biological weapons, a living organism, or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host;

(rr) “weapon of mass destruction” means, any:

- (1) chemical weapon or any other weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or its precursors;
- (2) biological weapon, or any other weapon involving a disease organism; or
- (3) nuclear material, weapon, or device, and any other weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

Section 4. Application, jurisdiction, and enforcement. Ministry of Justice shall have primary enforcement authority for this Act.

(a) Palau shall have and take jurisdiction over and prosecute any crime established by this Act when the offense:

- (1) is committed in Palau;
- (2) is committed by a Palau citizen or national;
- (3) is committed on board an aircraft or ship;

- (a) registered under Palau national law at the time the offense was committed; or
- (b) operating under or flying the Palau flag;
- (i) which lands in the territory of the Republic of Palau with the alleged offender still on board; or
- (ii) leased or chartered without crew to a lessee who has its principal place of business in Palau, or who is a habitual resident of Palau;
- (4) is committed against or on board a fixed platform while it is located on Palau's continental shelf;
- (5) was directed towards or resulted in the carrying out of a crime against a Palau citizen or national, or during its commission a Palau citizen or national is seized, threatened, injured or killed;
- (6) was directed towards or resulted in the carrying out of a crime against the government of Palau or a Palau government facility abroad, including diplomatic or consular premises of Palau;
- (7) was directed towards or resulted in a crime committed in an attempt to compel Palau to do or abstain from doing any act;
- (8) was committed by a stateless person whose habitual residence is in Palau; or
- (9) is committed in a foreign state by an alleged offender who is present in Palau, and the alleged offender is not extradited to a foreign State that has established jurisdiction over the offense or the alleged offender.

(b) Application of any provisions of this Act, relating to or implementing the provisions of any international terrorism convention or protocol, shall conform to and meet the requirements of the particular convention or protocol, and shall be subject to the exclusions and jurisdictional requirements contained therein.

Section 5. Terrorist acts. It shall be a crime, punishable by the penalties established by section 6, for any person to knowingly, by any means, directly or indirectly, engage in a terrorist act.

Section 6. Criminal penalties; criminal complicity and inchoate offenses; no time limitation on prosecution; detention of suspected terrorists.

(a) Crimes established by this Act resulting in the death of any natural person, are punishable by a minimum term of imprisonment of 10 years and a maximum term of life, and unless otherwise expressly provided, a maximum fine of \$1,000,000; All other crimes established by this Act, unless otherwise expressly provided, are punishable by a minimum term of imprisonment of 20 years and a maximum term of life, and unless otherwise expressly provided, a maximum fine of \$1,000,000, and in every case. The Court shall not place on probation any person convicted of such a crime; nor shall the term of imprisonment imposed run concurrently with any other term of imprisonment.

(b) In lieu of the amount of the fine otherwise authorized by this Act, and in addition to any term of imprisonment, a defendant who derived profits or other proceeds from a crime established by this Act may be fined not more than twice the gross profits or other proceeds, where the profits or proceeds from the offense exceed the maximum assessable fine.

(c) A person also commits a crime, punishable by the same penalties established by subsection (a), if that person knowingly:

- (1) attempts or conspires to commit;

- (2) participates as an accomplice in; or
- (3) organizes or directs others to commit;

any crime established by this Act.

(d) Any person who threatens to commit any crime established by this Act shall, upon conviction, be subject to a minimum term of imprisonment of five years and a maximum term of life, or a fine of not more than \$250,000, or both.

(e) Notwithstanding any other provision of law, there shall be no limitation of time on when a prosecution for a crime established by of this Act can be brought. In situations of urgency, where there are reasonable grounds to believe that detention of any person is necessary to prevent terrorism from occurring, or to prevent any person from interfering with an investigation relating to suspected terrorism, any law enforcement officer, immigration officer, or customs official in Palau shall be authorized to detain such person for a period of 48 hours for purposes of investigation; provided, however, such period of detention may be extended by Court order for an additional seven (7) days, without the filing of criminal charges against such person.

(f) The Court, in imposing sentence on any person convicted of a terrorism offense, shall order, in addition to any other sentence imposed, that the person forfeit to Palau all property described in Section 7.

#### Section 7. Criminal forfeiture.

(a) Any person convicted of a terrorism offense shall be required to forfeit to Palau, irrespective of any other provision of law:

- (1) any property used or intended to be used by a person involved in the offense;
- (2) any property constituting or derived from proceeds the person obtained, directly or indirectly, from the offense; and
- (3) any property used in any manner or part, to commit, or to facilitate the commission of, such offense.

Such a forfeiture shall be ordered by the Supreme Court when any such person is convicted upon a finding supported by a preponderance of the evidence that any particular property is within one or more of the categories in Section 7(a) (1), (2), or (3).

(b) When the specific property cannot be identified, found, or recovered, the Court shall confiscate property of equal value from the owner of the property in question.

(c) Any instrument executed free of charge or for a consideration *inter vivos* or *mortis causa*, the purpose of which is to safeguard property from confiscation measures as provided in this section, is void. In the case of the nullification of a contract involving payment, the buyer is reimbursed only for the amount actually paid.

(d) Weapons of mass destruction, plastic explosives, and nuclear material shall be seized, confiscated, and forfeited to Palau; and the Minister of Justice shall provide for their destruction or other appropriate disposition.

(e) For the purposes of forfeiture proceedings under this section, a temporary restraining order and seizure warrant may be entered upon application of the Attorney General without notice or opportunity for a hearing when an information or complaint has not yet been filed with respect to the property, where there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and exigent circumstances exist that place the life or health of any person in danger.

(f) The provisions of this section shall be implemented without prejudice to the property rights of third parties acting in good faith.

(g) The owner or possessor of any property seized under this section shall be liable to Palau for any expenses incurred incident to the seizure, including any expenses relating to the handling, storage, transportation, and destruction or other disposition of the seized property.

Section 8. Liability of legal persons and foreign governments.

(a) Legal persons and any foreign government shall be liable in the same manner and to the same extent as any natural person for any terrorism offense.

(b) The maximum assessable fine for legal persons and foreign governments shall be increased by ten times the amount assessable in the case of a natural person.

(c) Where, in proceedings for a violation of this Act, it is necessary to establish the state of mind of a legal person, it is sufficient to show that a director, officer, or agent who engaged in the conduct within the scope of his or her actual apparent authority, had that state of mind. Where, in proceedings for a violation of this Act, it is necessary to establish the state of mind of a foreign government, it is sufficient to show that its agent engaged in the conduct within the scope of his or her apparent authority, and had that state of mind.

(d) Any conduct engaged in by:

(1) a director, officer, agent of a legal person, or an agent of a foreign government, within the scope of his or her actual or apparent authority; or

(2) any other person at the direction, with the consent of or by agreement, whether express or implied, of a director, officer, agent of the legal person, or agent of a foreign government, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, officer, or agent;

shall be deemed, for the purposes of this Act, to have also been engaged in by the legal person or the foreign government.

(e) Legal persons who are found to have committed or aided any offense under this Act may additionally be:

(1) banned for a minimum period of five years from directly or indirectly carrying on certain business activities;

(2) ordered to permanently close their premises that were used for the commission of the offense;

(3) dissolved if they were created for the purpose of committing the offense; and

(4) required to publicize the judgment in the press or any other audiovisual media.

Section 9. Civil penalties; reimbursement.

(a) The Attorney General may bring a civil action in Palau against any person who commits a crime established by this Act, and upon proof by a preponderance of the evidence that such person committed the offense, the person shall be subject to pay a civil penalty in an amount not to exceed \$25,000,000 for each such offense.

(b) The imposition of a civil penalty under subsection (1) does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to Palau or any other person.

(c) The Court shall order any person convicted of a crime established by this Act to reimburse Palau for any expenses incurred by Palau incident to investigation and prosecution for the offense, including, without limitation, the seizure, storage, handling, transportation, destruction, or other disposition of any property that was seized in connection with an investigation of the commission of the offense by that person.



(d) A person ordered to reimburse Palau pursuant to subsection (c) shall be jointly and severally liable for such expenses with each other person, if any, who is ordered under subsection (c) to reimburse Palau for the same expenses.

Section 10. Civil forfeiture.

(a) The Attorney General may apply to the Court for an order forfeiting property to Palau and the Supreme Court of Palau shall order forfeiture thereof, upon proof by a preponderance of the evidence, that the property:

(1) is owned, possessed, used or intended to be used by a person in the commission of a terrorist act;

(2) constitutes, is derived from, or is money proceeds which a person obtained, directly or indirectly, as the result of a terrorist act; or

(3) was used or intended to be used in any manner or part to commit, or to facilitate the commission of a terrorist act.

(b) Notice of Civil Forfeiture and Rights of Third Parties.

(1) The Attorney General shall give no less than 14 days written notice of the application for civil forfeiture, to any person known to own, control, or have an interest in the subject property;

(2) Notice of the application shall be given to such other persons who may have an interest in the property, as ordered by the Court.

(3) Any persons claiming an interest in the subject property shall be given an opportunity to be heard in the proceedings, and if the person demonstrates by a preponderance of the evidence that such a claimant did not participate or attempt to participate in any terrorist act, has a bona fide interest in the property, and is not a member of a terrorist group, the Court shall order that such interest shall not be affected by the civil forfeiture order and the Court shall declare the nature and extent of any such interest.

(4) Notwithstanding the above, if a person obtains an interest in property after it has been used in the commission or attempted commission of a terrorist act, no order shall be made under subsection (3) above with respect to that interest unless the person is a bona fide purchaser for value, without reason to suspect that the property was used in the commission or attempted commission of a terrorist act.

(5) After a civil forfeiture order is entered, a person claiming an interest in the forfeited property may, within 6 months of the date of the entry of the order, request relief from the operation of the order under subsection (3) above, unless such person had knowledge of the application for the civil forfeiture order before the order was made or appeared at the hearing on the application.

(c) Voidable Transfers. The Court may set aside any conveyance or transfer of any property which was seized, forfeited, or is subject to seizure or forfeiture under Sections 7, 9 or 10 of this Act, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

Section 11. Private causes of action for terrorism.

(a) Any Palau citizen or national injured in his or her person, property, or business by reason of terrorism, or his or her estate, survivors, or heirs, may sue therefore in the Supreme Court of Palau and shall recover threefold the damages he or she has sustained, and the cost of the suit, including reasonable attorney fees.

(b) A final judgment or decree rendered in favor of Palau in any criminal proceeding relating to a terrorism offense shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

(c) A final judgment or decree rendered in favor of any foreign State in any criminal proceeding relating to a terrorism offense shall, to the extent that such judgment or decree may be accorded full faith and credit under the laws of Palau, stop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

(d) No action shall be maintained under subsection (a) for injury or loss by reason of an act of war.

(e) No action shall be maintained under subsection (a) against Palau, an agency of Palau, an officer or employee of Palau, or any agency thereof acting within his or her official capacity or under color of legal authority.

Section 12. Injunctions. The Republic of Palau may obtain, in a civil action, an injunction against the development, production, stockpiling, transferring, acquisition, retention, or possession of any:

(a) biological agent, toxin, or delivery system of a type or in a quantity that under the circumstances has no apparent justification for prophylactic, protective, or other peaceful purposes; or

(b) toxic chemical or precursor, of a type or in a quantity that under the circumstances has no apparent justification for a purpose not prohibited by law or the “United Nations Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction”.

Section 13. Duty to take measures. The Minister of Justice shall take appropriate measures to implement all provisions of this Act, including, but not limited to:

(a) establish Palau's jurisdiction over and prosecute every crime established by this Act;

(b) to investigate terrorism, and upon receiving information that an alleged offender may be present in Palau, shall take the person into custody and take other appropriate measures to ensure the alleged offender's presence for the purpose of prosecution;

(c) take into custody and extradite any alleged offender who is present in Palau, and who is subject to arrest and detention for purposes of extradition pursuant to the Extradition and Transfer Act of 2001, Chapter 10 of Title 18 of the Palau National Code;

(d) provide early warning and furnish any relevant information in the possession of Palau to those countries which the General Minister of Justice believes would have jurisdiction, where there is reason to believe that a terrorism offense has been or will be committed;

(e) identify, detect, freeze, seize, and obtain forfeiture of any property used or allocated for the purpose of committing any terrorism offense as well as the proceeds derived from such offenses;

(f) serve as the national focal point with respect to all matters relating to the international terrorism conventions, and to implement, conform to, and abide by the express requirements of any international terrorism convention to which Palau is a party, in carrying out any functions under this Act, and to ensure that any person, regarding whom the measures referred to in this section are being taken, shall be afforded the protections to which such person is expressly entitled under the relevant international terrorism convention;

(g) prevent the cross border movement of terrorists, and to track the movement of such persons, and of persons who are members of terrorist organizations;

(h) prevent the admission of terrorists into Palau, except as may be necessary to secure that person's presence for the purpose of extradition or prosecution for a terrorism offense;

(i) prevent attacks on the person, freedom, or dignity of internationally protected persons;

(j) prevent the movement into or out of Palau, of unauthorized plastic explosives (especially, unmarked plastic explosives), and to prevent their manufacture;

(k) provide timely notification of the fact that a person is in custody and of the circumstances which warrant that person's detention, directly, or through the depositary of the relevant international terrorism convention, when Palau has taken a person into custody or has taken other measures with respect to any person pursuant to this section to:

(1) the appropriate authorities of the country of which the detained person is a citizen or national, if the person is not a citizen or national of Palau;

(2) the State Party to the relevant international terrorism convention that have established jurisdiction over the person or the offense in question in accordance with the convention, and to the depositary of the convention;

(3) to the country of registration of the aircraft, in cases involving aircraft;

(4) to the country whose flag the ship was flying, in cases involving ships; and

(5) to any other foreign State or interested person, if the Minister of Justice considers it advisable; and

(l) order the freezing of property, by administrative decision, of individuals and organizations designated by the United Nations Security Council acting under Chapter VII of the United Nations Charter. Any individual or organization whose property has been frozen pursuant to this section and asserts that they were included on the list as the result of an error may seek to have their name removed from the list by submitting a request to this effect within thirty days of the publication of the list to the agency who ordered the freezing, indicating all factors that could demonstrate the error. The agency's decision with respect to this request may be appealed to the Supreme Court of the Republic of Palau, but shall in no event be stayed or vacated pending a final decision by the Court.

#### Section 14. Extradition.

(a) Terrorism offenses are hereby declared to be extraditable offenses.

(b) Extradition for terrorism offenses shall be carried-out pursuant to and in accordance with the Extradition and Transfer Act of 2001, Chapter 10 of Title 18 of the Palau National Code.

(c) For the purpose of extradition, a terrorism offense shall be treated, as if it had been committed not only in the place in which it occurred but also in the territory of any State Party to an international terrorism convention that is required to establish jurisdiction over the offense in accordance with that convention.

#### Section 15. Mutual legal assistance.

(a) The Attorney General is authorized to make requests on behalf of Palau to the appropriate authority of a foreign State, or grant requests of a foreign State, for legal assistance in any investigation or proceeding relating to terrorism, or a terrorist organization.

(b) Mutual legal assistance provided under this Act shall be carried-out pursuant to and in accordance with the Mutual Assistance in Criminal Matters Act of 2001, Chapter 13 of Title 18

of the Palau National Code, which is hereby amended to expressly allow for the type of assistance authorized by subsection (a), the Anti-Money Laundering and Proceeds of Crime Act of 2001 or any Memorandum of Understanding entered into between the competent authorities on behalf of Palau and the foreign State.

Section 16. Intelligence sharing. The Minister of Justice, the Attorney General, the Financial Intelligence Unit, and other law enforcement authorities and officers of Palau designated by the Minister of Justice shall be freely authorized and encouraged to share and disclose intelligence information relating to terrorism, terrorist organizations, transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and to provide early warning of such matters to the competent law enforcement authorities of:

- (a) any foreign State that is a State Party to an international terrorism convention in respect of which Palau is also a Party;
- (b) any foreign State that is a member of the Pacific Islands Forum;
- (c) the United States, in accordance with the duties and responsibilities of Palau under the Compact of Free Association with the United States; and
- (d) any other foreign State that is a member of the United Nations.

Notwithstanding the above, any restrictions on the use or disclosure of the information by the granting agency shall be binding on the receiving agency. Where a request from a foreign State requires that its existence and substance be kept confidential, such requirement shall be observed except to the extent necessary to give effect to the request. If that is not possible, the requesting authorities shall be promptly informed to that effect.

Section 17. No asylum.

- (a) Palau shall not grant refugee status or provide asylum or safe haven to any terrorist or to any alleged offender.
- (b) Any alleged offender who is denied asylum or safe haven in accordance with subsection (a) may petition the Supreme Court for a hearing, to be given priority over other matters. Such hearing shall be conducted for the purpose of determining, by a preponderance of the evidence, whether such person has engaged in terrorism. During the pendency of such proceedings, the alleged offender may be detained under such conditions as the Court deems just and proper.

Section 18. Prevention.

(a) Palau shall cooperate with the competent authorities of the United States and other members of the United Nations and the Pacific Islands Forum in the prevention of terrorism by taking all practicable measures to prevent and counter preparations in the Republic of Palau for the perpetration of terrorism within or outside the territory of Palau, including measures to prohibit illegal activities of persons and organizations that knowingly encourage, instigate, organize, finance, or engage in terrorism.

(b) Palau shall further cooperate in the prevention of terrorism by exchanging accurate and verified information to provide early warning of possible terrorism, in particular by:

- (1) establishing and maintaining channels of communication to facilitate the secure and rapid exchange of information concerning all aspects of terrorism and terrorist organizations;

(2) exchanging accurate and verified entry and exit data and information for ports of entry into Palau, including airports and seaports, and coordinating administrative and other measures taken, as appropriate, to prevent the cross-border movement of terrorists, and to track their movement and the movement of members of terrorist organizations; and

(3) conducting inquiries, with respect to terrorists and members of terrorist organizations, concerning:

(i) the identity, whereabouts, and activities of persons of whom reasonable suspicion exists that they engage in terrorism or are members of a terrorist organization;

(ii) the movement of property linked to persons who engage in terrorism or who are members of a terrorist organization; and

(iii) participation in research and development, and exchange of information regarding methods of detection of cross border movement of terrorists and members of terrorist organizations, including detection of forged or falsified travel documents, trafficking of arms, explosives, illicit drugs, contraband, or sensitive materials, and cross-border movement of nuclear, chemical, biological, and other potentially deadly materials, or use of communication technologies by terrorist groups.

Section 19. Transfer of persons.

(a) Transfer of any person who is being detained or is serving a sentence in the territory of Palau or a foreign State, whose presence is requested in Palau or in a foreign State for purposes of identification, testimony, or otherwise providing assistance in obtaining evidence for the investigation or prosecution of a terrorism offense, shall be authorized and allowed where the countries agree on the conditions.

(b) Transfer of such persons shall be carried out pursuant to and in accordance with requirements of the Extradition and Transfer Act of 2001, Chapter 10 of Title 18 of the Palau National Code for convicted persons, whether or not the person to be transferred has already been convicted of an offense.

Section 20. Other rights, obligations and responsibilities not affected; no liability for actions taken in good faith.

(a) Nothing in this Act shall affect other rights, obligations, and responsibilities of Palau and individuals under international law, in particular the purposes of the Charter of the United Nations, the Compact of Free Association with the United States, international humanitarian law and other relevant conventions.

(b) Nothing in this Act entitles Palau or any other country to undertake in the territory of the other the exercise of jurisdiction or performance of functions that are exclusively reserved for the authorities of that country by its domestic law.

(c) Persons shall be immune from suit and civil liability for actions taken in good faith pursuant to and in accordance with this Act.

Section 21. Resolution of disputes. Any dispute between Palau and any State Party to an international terrorism convention concerning the interpretation or application of this Act relating to application of the convention shall be resolved in accordance with the provisions of the relevant international terrorism convention.

Section 22. Implementing regulations. Minister of Justice may prescribe rules and regulations reasonably necessary to implement the provisions of this Act.

Subchapter II  
Suppression of Financing of Terrorism

Section 23. Purpose of subchapter II. The purpose of this subchapter is to create offenses relating to the financing of terrorism and to give effect to the “International Convention for the Suppression of the Financing of Terrorism”, to which Palau became a party by accession on November 14, 2001, and other relevant provisions of United Nations Security Council Resolution 1373, and the “Special Recommendations on Terrorist Financing” issued by the Financial Action Task Force on Money Laundering.

Section 24. Financing of terrorism prohibited.

(a) Any person who by any means, directly or indirectly, or as an accomplice, solicits, provides or collects property, or provides financial or other services, or organizes or directs others to solicit, provide or collect property or provide financial or other services, with the intention that they should be used or in the knowledge that they are to be used, in full or in part:

(1) for Terrorism;

(2) for the benefit of persons who engage in Terrorism, or for the benefit of entities owned or controlled, directly or indirectly, by persons who engage in Terrorism; or

(3) for the benefit of persons or entities acting on behalf of or at the direction of any person referred to in subsection (a)(2);

commits a crime, the Financing of Terrorism, punishable by the penalties established by Section 6 of this Act.

(b) For an act to constitute an offense under this section it shall not be necessary that the property was actually used to commit or carry out a terrorism offense, or terrorist act.

(c) No consideration of a political, philosophical, ideological, racial, ethnic, religious, or other similar nature may be taken into account in order to justify the commission of any of the aforementioned offenses.

( d ) Legal persons and any foreign government shall be liable in the same manner and to the same extent as any natural person for the offense of Financing of Terrorism.

( e ) The maximum assessable fine for legal persons and foreign governments shall be increased by ten times the amount assessable in the case of a natural person.

( f ) Where, in proceedings for a violation of this Section, it is necessary to establish the state of mind of a legal person, it is sufficient to show that a director, officer, or agent who engaged in the conduct within the scope of his or her actual apparent authority, had that state of mind. Where, in proceedings for a violation of this Act, it is necessary to establish the state of mind of a foreign government, it is sufficient to show that its agent engaged in the conduct within the scope of his or her apparent authority, and had that state of mind.

( g ) Any conduct engaged in by:

(1) a director, officer, or agent of a legal person, or an agent of a foreign government, within the scope of his or her actual or apparent authority; or

(2) any other person at the direction or with the consent or agreement (whether express or implied) of a director, officer or agent of the legal person, or agent of a foreign

government, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, officer or agent; shall be deemed, for the purposes of this Act, to have also been engaged in by the legal person or the foreign government.

( h ) Legal persons who are found to have committed or aided an offense under this Section may additionally be:

(1) banned for a minimum period of five years from directly or indirectly carrying on certain business activities within the Republic of Palau;

(2) ordered to close permanently their premises that were used for the commission of the offense;

(3) dissolved if they were created for the purpose of committing the offense; and

(4) required to publicize the judgment in the press or any other audiovisual media.

Section 25. Prevention of terrorism financing through nonprofit entities.

(a) No corporation, business, enterprise, partnership, association, or entity, shall be granted charitable or non-profit status in Palau where there are reasonable grounds to believe that any property solicited, collected, held, used, or owned by such corporation, business, enterprise, partnership, association, or entity, may be diverted to a terrorist or a terrorist organization.

(b) Any donation made to a non-profit corporation, association, or organization in an amount equal to or greater than \$5,000, or any greater amount to be established pursuant to regulations issued by the Financial Intelligence Unit, shall be recorded in a record maintained for the purpose by the non-profit association or organization, containing the full details of the donor, the date, the nature, and the amount of the donation. The record shall be kept for a period of 3 years and shall be produced at the request of the Financial Intelligence Unit. When the donor of an amount in excess of that amount wishes to remain anonymous, the record may omit the identification, but the association or organization is required to disclose his or her identity at the request of the Financial Intelligence Unit.

(c) Any cash donation in an amount equal to or greater than \$10,000 or any sum established by regulation as promulgated by the Financial Intelligence Unit shall be reported to the Attorney General and the Financial Intelligence Unit pursuant to the procedures as set forth by regulation. A donation of any amount, whether cash or otherwise, shall be reported to the Attorney General and the Financial Intelligence Unit where the donation is suspected of being related to a terrorist operation, the financing of terrorism, or the proceeds of a crime as that term is defined in the Money Laundering and Proceeds of Crime Act.

(d) Any violation of the provisions of this section is punishable by one or more of the following penalties:

(1) a fine of no more than \$10,000;

(2) a temporary ban on the activities of the association or organization of no more than 2 years; or

(3) the dissolution of the association or organization.

Section 26. Seizure and detention of terrorist related property.

(a) Any Palau law enforcement officer or customs official may seize and, in accordance with this section, detain, any property, that the officer or official has probable cause to believe was derived from or intended for terrorism, financing of terrorism or terrorist organizations, including, without limitation, property being imported into or exported from Palau.

(b) Property of, or intended for, terrorist organizations shall be frozen, seized, and in accordance with this section, detained, where the organization has been designated as a terrorist organization by the United Nations Security Council, or by the Minister of Justice pursuant to regulations promulgated pursuant to this Act, or where there is probable cause to believe that the entity involved is a terrorist organization.

(c) Property detained under subsection (a) or (b) shall not be detained for more than forty-eight (48) hours after seizure, unless a judge of the Supreme Court grants an order of continued detention for a period not exceeding 3 months from the date of seizure, upon being satisfied that:

(1) there is probable cause to believe that the property was derived from terrorism, or is intended by any person for use in the commission of a terrorism offense or for a terrorist act; and

(2) the continued detention is justified while:

(i) its origin or derivation is further investigated; or

(ii) consideration is given to the institution in Palau or elsewhere of criminal proceedings against any person for an offense with which the property is connected; provided, however, upon request by the person from whom the property was seized and detained, the Court shall grant a hearing to determine if the order of continued detention is warranted.

(d) A judge of the Supreme Court may subsequently order, after hearing, with notice to all parties concerned, the continued detention of the property if satisfied of the matters mentioned in subsection (c), but the total period of detention shall not exceed two (2) years from the date of the order.

(e) Subject to subsection (f), property detained under this section may be released in whole or in part to the person on whose behalf the property was imported or exported:

(1) by order of a judge of the Supreme Court that continued detention is no longer justified, upon application by or on behalf of that person and after considering any views of the Attorney General to the contrary; or

(2) by an authorized officer or customs official, if satisfied that the continued detention is no longer justified.

(f) No property detained under this section shall be released where an application is made under this Act or other Palau national law for the purpose of:

(1) the confiscation and forfeiture of the whole or any part of the property;

(2) the property's restraint pending determination of liability to confiscation and forfeiture; or

(3) proceedings are instituted in Palau, or elsewhere, against any person for a terrorism offense with which the property is connected unless and until the proceedings relating to the relevant application or the proceedings for the offense, as the case may be, have been concluded.

(g) Property seized pursuant to this section shall be subject to confiscation and forfeiture pursuant to Sections 7 and 10 of this Act.

### Subchapter III

#### Cross-Border Movement of Terrorists

#### Section 27. Terrorists inadmissible.



(a) The following persons shall be considered inadmissible to Palau for purposes of immigration, or under a temporary visa of any kind, or otherwise, except for the purpose of prosecution or extradition for a terrorism offense:

- (1) A foreign national:
  - (i) convicted of a terrorism offense; or
  - (ii) who admits to having engaged in terrorism;
  - (iii) as to whom there is probable cause to believe such person has engaged in terrorism;
  - (iv) who the Minister of Justice knows, or has reasonable ground to believe, is engaged in or is likely after entry, to engage in terrorism;
  - (v) who has used his or her position of prominence within any country to endorse or espouse terrorism, or to persuade others to support terrorism or a terrorist organization, in a way that the Minister of Justice has determined undermines Palau's efforts to reduce or eliminate terrorism;
  - (vi) who is a representative a terrorist organization, specified as such in regulations promulgated by the Minister of Justice or designated as a terrorist organization by the United Nations Security Council; or
  - (vii) who is a representative of a political, social, or other similar group whose public endorsement of terrorism, or terrorist organizations, the Minister of Justice has determined undermines Palau's efforts to reduce or eliminate terrorism;
- (2) A foreign national, who the Minister of State, after consultation with the Minister of Justice, determines has been associated with a terrorist organization or terrorism and intends, while in Palau, to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of Palau.

(b) Except as otherwise provided in this section, foreign nationals who are inadmissible under this section, shall be ineligible to be admitted to Palau for any purpose, except, when necessary for the purposes of prosecution or extradition for a terrorism offense, and Title 13 of the Palau National Code is hereby amended to conform to the requirements of this section.

Section 28. Reports of cross-border movement of terrorists. All airlines, ships, and other entities that provide transportation, conveyance, or freight services to and from Palau shall be authorized and required to immediately report to the Minister of Justice, through disclosure of passenger manifests and any other available means, the intended movement of suspected terrorists into or out of Palau, and information regarding possible forged or falsified travel documents, trafficking of arms, explosives, illicit drugs, contraband, or sensitive materials, and cross-border movement of nuclear, chemical, biological, and other potentially deadly materials.

#### Subchapter IV Weapons of Mass Destruction

Section 29. Weapons of mass destruction offenses.

(a) Except as authorized by the President, any person who knowingly, by any means, directly or indirectly, develops, produces, ships, transports, transfers, receives, acquires, retains, possesses, imports, exports, or manufactures a weapon of mass destruction, commits a crime punishable by the penalties established by Section 6 of this Act; provided, however, if done with the intent to engage in terrorism or with knowledge that the weapon of mass destruction is

intended to be used for terrorism, the maximum fine shall be increased to \$100,000,000] for natural persons and \$[1,000,000,000] for legal persons.

(b) Any person who, without lawful authority expressly given by the President of Palau, uses or deploys a weapon of mass destruction, commits a crime punishable by the penalties established by section 6 of this Act; provided, however the maximum fine shall be increased to \$1,000,000,000 for natural persons and \$10,000,000,000 for legal persons.

#### Subchapter V Internationally Protected Persons

Section 30. Implementation of the convention on internationally protected persons. The purpose of this subchapter is to create offenses relating to internationally protected persons and to give effect to the "United Nations Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons", including Diplomatic Agents, to which Palau became a party by accession on November 14, 2001.

Section 31. Internationally protected persons offenses. Any person who knowingly, by any means, directly or indirectly, perpetrates:

(a) a murder, kidnapping, or other attack upon the person or liberty of an internationally protected person; or

(b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person, which is likely to endanger the person or his or her liberty;

commits a crime punishable by the penalties established by section 6 of this Act.

#### Subchapter VI Hostage-Taking

Section 32. Implementation of the convention on the taking of hostages. The purpose of this subchapter is to create hostage-taking offenses and to give effect to the "International Convention Against the Taking of Hostages", to which Palau became a party by accession on November 14, 2001.

Section 33. Hostage-taking offenses. Any person who knowingly, by any means, directly or indirectly, seizes or detains, and threatens to kill, to injure, or to continue to detain another person, the "hostage", in order to compel a third party, namely, Palau, a foreign State, an international intergovernmental organization, a natural or legal person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage, commits a crime punishable by the penalties established by section 6 of this Act.

#### Subchapter VII Terrorist Bombing

Section 34. Implementation of the convention on terrorist bombings. The purpose of this subchapter is to create offenses relating to terrorism using explosive or lethal devices and to give effect to the "International Convention for the Suppression of Terrorist Bombings", to which Palau became a party by accession on November 14, 2001.

Section 35. Terrorist bombing offenses. Any person who knowingly, by any means, directly or indirectly, delivers, places, discharges, deploys, or detonates any explosive, incendiary weapon, or lethal device that is designed, or has the capability, to cause death, serious bodily injury, or substantial property damage in, into, or against a place of public or private use, a State or government facility, a transportation system or an infrastructure facility:

- (a) with the intent to cause death or serious bodily injury; or
  - (b) with the intent to cause extensive destruction of such a place, facility, or system, where such destruction results in or is likely to result in major economic loss;
- commits a crime punishable by the penalties established by Section 29(b) of this Act for weapons of mass destruction.

#### Subchapter VIII Plastic Explosives

Section 36. Implementation of the convention on plastic explosives. The purpose of this subchapter is to prohibit unauthorized plastic explosives in Palau, and in particular, unmarked plastic explosives, and to give effect to the “Convention on the Marking of Plastic Explosives for the Purpose of Detection”, to which Palau became a party by accession on November 11, 1995.

Section 37. Prohibition on plastic explosives; offenses.

(a) Unless expressly authorized by the President, plastic explosives shall be prohibited in Palau; provided, however, where authorized by the President for legitimate needs, plastic explosives must contain a detection agent, as defined by the “Convention on the Marking of Plastic Explosives for the Purpose of Detection”, and as described in the “Technical Annex” to that convention.

(b) Any person who knowingly, by any means, directly or indirectly, develops, produces, ships, transports, transfers, receives, acquires, retains, possesses, manufactures, imports, or exports an unauthorized plastic explosive commits a crime punishable by a minimum of ten (10) years imprisonment and a maximum fine of \$50,000; provided, however where the plastic explosive was developed, produced, shipped, transported, transferred, received, acquired, retained, possessed, manufactured, imported, or exported with the intent to engage in terrorism, the crime shall be punishable by the penalties established by Section 29(a) of this Act for weapons of mass destruction; and provided, further, where the plastic explosive was used or deployed, the penalties established by Section 29(b) of this Act for weapons of mass destruction shall apply.

#### Subchapter IX Safety of Civil Aviation

Section 38. Implementation of the conventions on civil aviation. The purpose of this subchapter is to create offenses relating to aircraft and airports serving international civil aviation and to give effect to the international civil aviation conventions and protocol identified in Section 3(q)(1), (2), (3), and (7) of this Act.

Section 39. Civil aviation offenses. In any airspace or territory where any international civil aviation convention or protocol referenced in section 38 would apply, any person who knowingly, by any means, directly or indirectly:

(a) performs an act of violence against a person on board an aircraft in flight, if that act is likely to endanger the safety of that aircraft;

(b) by force or threat, or by any other form of intimidation, seizes or exercises control of an aircraft in flight;

(c) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;

(d) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight;

(e) destroys or damages air navigation facilities used in international air navigation, or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight;

(f) communicates information which the person knows to be false, thereby endangering the safety of an aircraft in flight; or

(g) using any device, substance or weapon:

(1) performs an act of violence against a person at an airport serving international civil aviation, which causes, or is likely to cause, serious injury or death; or

(2) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport; commits a crime punishable by the penalties established by section 6 of this Act; provided, however, where, in committing such crime, the person uses or deploys a weapon of mass destruction, the penalties established by section 29(b) of this Act shall apply.

Section 40. Power to take reasonable measures.

(a) The aircraft commander, when he or she has reasonable grounds to believe that a person has committed, or is about to commit on board the aircraft, a criminal offense or an act which, whether or not it is a criminal offense, may or does jeopardize the safety of an aircraft or of persons or property therein, or which jeopardizes good order and discipline on board an aircraft, may:

(1) impose upon such person reasonable measures, including restraint, which are necessary:

(i) to protect the safety of the aircraft, or of persons or property therein; or

(ii) to maintain good order and discipline on board; or

(iii) to enable the aircraft commander to deliver such person to competent authorities; or

(2) disembark the person in accordance with the provisions of this subchapter.

(b) The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom the aircraft commander is entitled to restrain.

(c) Any crew member or passenger may also take reasonable preventive measures without such authorization when the crew member or passenger has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.

(d) Measures of restraint imposed upon a person in accordance with this section shall be imposed in accordance with and conform to the requirements of the Convention on “Offenses and Certain Other Acts Committed on Board Aircraft”.

Section 41. Power to disembark certain passengers. The aircraft commander may, in so far as it is necessary to protect the safety of the aircraft, or of persons, or property therein, or to maintain good order and discipline on board, disembark, in accordance with the “Convention on Offenses and Certain Other Acts Committed on Board Aircraft”, any person who the aircraft commander has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated by Section 40(a)(2).

Section 42. Power to deliver alleged offenders to competent authorities. The aircraft commander may deliver to competent law enforcement authorities, in accordance with the “Convention on Offenses and Certain Other Acts Committed on Board Aircraft”, any person who the aircraft commander has reasonable grounds to believe has committed on board the aircraft an act which, in the commander's opinion, is a serious offense according to the criminal laws of the country of registration of the aircraft.

Section 43. No liability for actions taken. For actions taken in accordance with Section, 40, 41, or 42, neither the aircraft commander, any other member of the crew, any passenger, the owner or operator of the aircraft, or the person on whose behalf the flight was performed, shall be held responsible in any proceeding on account of the treatment undergone by the person in respect of whom the actions were taken.

#### Subchapter X

##### Safety of Maritime Navigation and Fixed Platforms

Section 44. Implementation of the convention on maritime safety and the fixed platforms protocol. The purpose of this subchapter is to create offenses relating to the safe navigation of ships on the high seas and the safety of fixed platforms and to give effect to the:

(a) “Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation”; and

(b) “Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf”;

to which Palau became a party by accession on December 4, 2001.

Section 45. Maritime offenses. In any waters where the convention and protocol referenced in Section 44 would apply, any person who knowingly, by any means, directly or indirectly:

(a) seizes or exercises unauthorized control over a ship or fixed platform by force or threat thereof, or by any other form of intimidation; or

(b) injures or kills any person, or endangers the safe navigation of a ship, or endangers the safety of a fixed platform, by:

(1) committing an act of violence against a person on board the ship or fixed platform;

(2) destroying or damaging the ship, its cargo, or the fixed platform;

(3) placing, or causing to be placed, any device or substance on the ship or fixed platform;

(4) destroying or damaging maritime navigational facilities, or interfering with their operation; or

(5) communicating information which the person knows to be false; commits a crime punishable by the penalties established by Section 6 of this Act; provided, however, where, in committing such crime, the person uses or deploys a weapon of mass destruction, the penalties established by Section 29(b) of this Act shall apply.

Subchapter XI  
Nuclear Material

Section 46. Nuclear material offenses. Any person who intentionally, by any means, directly or indirectly:

(a) without lawful authority, receives, possesses, uses, transfers, alters, disposes of, or disperses nuclear material, under circumstances which cause or are likely to cause death or serious bodily injury to any person or substantial damage to property;

(b) commits a theft or robbery of nuclear material;

(c) embezzles or fraudulently obtains nuclear material;

(d) makes a demand for nuclear material by threat or use of force or by any other form of intimidation;

(e) threatens:

(1) to use nuclear material to cause death or serious bodily injury to any person or substantial property damage; or

(2) to commit a theft or robbery of nuclear material in order to compel a natural or legal person, or an international organization, or country to do or to refrain from doing any act; commits a crime punishable by the penalties established by Section 29(b) of this Act for weapons of mass destruction.

Section 47. Effective date. This Act shall take effect upon its approval by the President of the Republic, or upon becoming law without such approval.

PASSED: April 25, 2007

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Tommy E. Remengesau, Jr., President Republic of Palau

SEVENTH OLBIL ERA KELULAU

First Regular Session, January 2005

RPPL No. 7-27

(Re: Senate Bill No. 7-21, SD2, HD1)

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AN ACT

To amend Title 17 of the Palau National Code by the addition of a new Chapter, to be called the Cash Courier Disclosure Act of 2007, to establish measures to detect the physical cross-border transportation of currency and negotiable instruments, with the objective of ensuring that terrorists and other criminals cannot finance their activities or launder the proceeds of their crimes through such transportation; to amend RPPL No. 6-3 to establish measures to combat illegal banking activities; and for other purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO ENACT AS FOLLOWS:

Section 1. Purpose. The purpose of this Act is to establish measures to detect the physical cross-border transportation of currency and negotiable instruments, and to prevent terrorists and other criminals from financing their activities or laundering the proceeds of their crimes.

Section 2. Short title. This Act shall be known and may be cited as the “Cash Courier Disclosure Act of 2007”.

Section 3. Amendment. 17 PNC is hereby amended to add the following new chapter:

“Chapter 39  
Cash Courier Disclosure Act of 2007

§ 3901 Definitions. In this Act, unless the context otherwise requires:

- (a) “*Attorney General*” means the Attorney General of the Republic of Palau;
- (b) “*Currency*” refers to banknotes and coins that are in circulation as a medium of exchange;
- (c) “*Declaration*” means the form prescribed by the Division of Customs, which requires a signed, written disclosure of the transport of currency or negotiable instruments into or out of the Republic of Palau;
- (d) “*Division of Customs*” means the Ministry of Finance, Bureau of Revenue, Customs & Taxation, Division of Customs;
- (e) “*Financial Intelligence Unit*” means the governmental unit created pursuant to section 15 of RPPL No. 6-4;
- (f) “*negotiable instruments*” includes monetary instruments in bearer form, including but not limited to, checks, travelers checks, promissory notes and money orders that are either endorsed without restrictions, made out to a fictitious payee, or otherwise

in such form that title thereto passes upon delivery, such as signed instruments, with the payee's name omitted.

(g) "*person*" means any natural or legal person;

(h) "*Supreme Court*" means the Supreme Court of the Republic of Palau, and all its divisions;

(i) "*transport cash or negotiable instruments*" refers to any in-bound or out-bound physical transportation of currency or negotiable instruments from one country to another country. The term includes the following modes of transportation:

(1) physical transportation by a natural person, or in that person's accompanying luggage or vehicle;

(2) shipment of currency through containerized cargo; or

(3) the mailing of currency or negotiable instruments by a natural or legal person.

§ 3902 Report on the transport of cash and negotiable instruments.

(a) Any person who attempts to, or physically transports cash or negotiable instruments in an aggregate amount of \$10,000 or more (or its equivalent in foreign currency) at one time into or out of the Republic of Palau shall make a written, signed Declaration thereof to the Division of Customs on the form prescribed by the Division of Customs. A copy shall be provided to the Financial Intelligence Unit. A person is deemed to have caused such transportation, mailing or shipping when he or she, aids, abets, counsels, commands, procures, or requests it to be done by a financial institution or any other person.

(b) This section shall not require a Declaration to be submitted by:

(1) A bank licensed by the Financial Institutions Commission or its agent in respect to currency or other negotiable instruments physically carried into or out of Palau for its own domestic use or purposes;

(2) A common carrier of passengers in respect to currency or other negotiable instruments in the possession of its passengers;

(3) A common carrier of goods in respect to shipments of currency or negotiable instruments not declared to be such by the shipper;

(4) A traveler's check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public.

(c) A transfer of funds through normal banking procedures that does not involve the physical transportation of currency or negotiable instruments is not required to be reported by this section. This section does not require that more than one Declaration be filed covering a particular transportation, mailing or shipping of currency or other negotiable instruments with respect to which a complete and truthful Declaration has been filed by a person. However, no person required by paragraph (a) of this section to file a Declaration shall be excused from liability for failure to do so if, in fact, a complete and truthful Declaration has not been filed. A copy of any Declaration that is filed shall accompany the currency until its final destination.

§3903 Requirement to promulgate regulation. The Division of Customs shall promulgate such regulations as may be necessary to enforce the requirements of this Act.



§3904 Availability of information.

(a) If the Division of Customs suspects or has reasonable grounds to suspect that a negotiable instrument or currency is being transported in violation of this Chapter, or if the Division of Customs suspects or has reasonable grounds to suspect that any negotiable instrument or currency, regardless of amount, is the proceeds of criminal activity or related to terrorist financing, it shall report the factual basis to the Attorney General, and file a suspicious transaction report with the Financial Intelligence Unit within 48 hours. The report filed with the Financial Intelligence Unit shall be in form and manner set forth in regulations promulgated by the Financial Intelligence Unit for this purpose.

(b) The Division of Customs and the Financial Intelligence Unit may make any information set forth in any report received pursuant to this Chapter available to another agency of the government or to an agency of a foreign government, upon the request of the head of such department or agency made in writing and stating the particular information desired, and the criminal, tax or regulatory purpose for which the information is sought.

(c) Any information made available under this section to other departments or agencies of the government of Palau, or any foreign government, shall be received by them in confidence, and shall not be disclosed to any person except for official purposes relating to the investigation, proceeding, or matter in connection with which the information is sought.

§3905 Enforcement Authority With Respect to Transportation of Currency or Negotiable Instruments.

(a) If an officer of the Division of Customs suspects or has reasonable cause to believe that there is a negotiable instrument or currency being transported without the filing of the Declaration required by § 3902 of this chapter, he or she may stop and search, without a search warrant, a vessel, aircraft, or other conveyance, envelope, or other container, or person entering or departing from the Republic of Palau with respect to which or whom the officer reasonably believes is transporting such instrument or currency. Such authority shall only be applicable at ports of entry to the Republic of Palau.

(b) If an officer of the Division of Customs suspects or has reasonable cause to believe that a negotiable instrument or currency is the proceeds of a criminal activity or are related to terrorist financing, he or she may stop and search, without a search warrant, a vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the Republic of Palau with respect to which or whom the officer reasonably believes is transporting such instrument or currency. Such authority shall only be applicable at ports of entry to the Republic of Palau.

(c) If the Office of the Attorney General has reason to believe that currency or negotiable instruments in an aggregate amount of \$10,000 or more (or its equivalent in foreign currency) are being or have been transported, and no Declaration has been filed, or a materially incomplete or inaccurate Declaration has been filed, the Office of the Attorney General may apply to the Supreme Court for a search warrant. Upon a

showing of probable cause, the court may issue a warrant authorizing the search of any or all of the following:

- (1) One or more designated persons;
- (2) One or more designated or described places or premises;
- (3) One or more designated or described letters, parcels, packages, or other physical objects;
- (4) One or more designated or described vehicles.

(d) If an officer of the Division of Customs has reasonable cause to believe that a negotiable instrument or currency is being transported without the filing of the Declaration required by § 3902 of this chapter, or that a negotiable instrument or currency is the proceeds of crime or related to terrorist financing, the officer may seize the currency or negotiable instrument and hold them for a period of 14 calendar days pending investigation of the matter. For good cause shown, the Office of the Attorney General may apply to the Supreme Court for additional 14-day extensions of this period.

§3906 Penalties. The penalties stated below are in addition to any criminal or civil penalties which may be imposed under any other provisions of law applicable in the Republic of Palau.

(a) Administrative Penalty. For any failure to file a Declaration required under this Chapter, or for filing such a Declaration containing any material omission or misstatement, the Chief of the Division of Customs may assess an administrative penalty of 5% of the amount of the currency or negotiable instruments transported, mailed, or shipped.

(b) Civil Penalty. The Attorney General may bring a civil action in the Republic of Palau against any person who willfully violates the requirements of this Chapter. Upon proof by a preponderance of the evidence that such person committed the offense, the person shall be subject to a civil penalty not to exceed twice the amount of the currency or negotiable instruments carried, or attempted to be carried, by the Defendant. Willfulness may be inferred through objective factual circumstances.

(c) Penalties applicable to corporate entities. Corporate entities, other than the Republic of Palau, on whose behalf or for whose benefit a violation of § 3902 has been committed by one or their agents or representatives, shall be fined in an amount equal to two times the fines specified for natural persons. In the case of corporate entities that are found guilty of three or more offenses under § 3902 within a five-year period, such entities may be:

- (1) permanently or for a minimum of five years banned from directly or indirectly carrying on the business activities in the Republic of Palau for which they are licensed or conducted at the time of the offense;
- (2) ordered to close permanently; or
- (3) required to publicize the judgment in the press or by radio or television.

§3907 Applicable law for rulemaking and regulations. The Administrative Procedure Act, 6 PNC Chapter 1, shall apply for all rules and regulations promulgated under this Act.”

Section 4. Amendment. Section 3 of RPPL No. 6-3 is hereby amended to add subsections (g), and (h), as follows:

“Section 3(g) The Attorney General may bring a civil action in the Republic of Palau against any natural or legal person who attempts to, or engages in the business of a bank, securities broker, or securities dealer in the Republic of Palau without a valid license by the Financial Institutions Commission. Upon proof by a preponderance of the evidence that such person committed the offense, a natural person shall be subject to a civil penalty of at least \$25,000. Corporate entities, other than the Republic of Palau, on whose behalf or for whose benefit a violation of Section 3(g) has been committed by one or their agents or representatives, shall be fined in an amount equal to two times the fines specified for natural persons, or the amount of gross profit realized by the entity for the two years prior to the offense, whichever is greater. Additionally, such entities may be:

(1) permanently, or for a minimum of five years, banned from directly or indirectly carrying on the business activities in the Republic of Palau for which they are licensed or conducted at the time of the offense;

(2) ordered to close permanently; or

(3) required to publicize the judgement in the press or by radio or television.

Section 3(h) Actions under either Section 3(g) or 3(h) shall not prejudice any action taken by the Board pursuant to its powers under the FIA.”

Section 5. Effective date. This Act shall take effect upon its approval by the President of the Republic, or upon its becoming law without such approval.

PASSED: April 25, 2007

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Tommy E. Remengesau, Jr., President, Republic of Palau

RPPL No. 6-6 (Intro. as H.B. No. 6-51-2, HD2,SD1)

SIXTH OLBIIL ERA KELULAU Third Regular Session, April 2001 RPPL No. 6-6

## **AN ACT**

To amend Title 18 of the Palau National Code by adding a new Chapter 13, entitled the “Mutual Assistance in Criminal Matters Act of 2001,” to enable the widest range of international cooperation to be given and received by the Republic of Palau in investigations, prosecutions, and related proceedings concerning serious offenses against the laws of the Republic of Palau or of foreign States, and for other purposes.

## **Contents**

### **THE PEOPLE OF PALAU REPRESENTED IN THE OLBIIL ERA KELULAU DO ENACT AS FOLLOWS:**

**Section 1. Amendment.** Title 18 of the Palau National Code is hereby amended by the enactment of a new Chapter 13 to provide as follows:

#### **“CHAPTER 13 - MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

##### **SUBCHAPTER I - GENERAL PROVISIONS**

Section 1. **Short title.** This Act shall be known and may be cited as the “Mutual Assistance in Criminal Matters Act of 2001.”

Section 2. **Purpose.** The purpose of this Act is to enable the Republic of Palau to cooperate with foreign States in criminal investigations and proceedings.

Section 3. **Application.** The Act shall apply in relation to mutual assistance in criminal matters between the Republic of Palau and any foreign State, subject to any condition, variation or modification in any existing or future agreement with that State, whether in relation to a particular case or more generally.

Section 4. **Definitions.** Unless the subject or context otherwise requires, in this Act:

- (a) “appeal” includes proceedings by way of discharging or setting aside a judgment, and an application for a new trial or for a stay of execution;
- (b) “Attorney General” means the Attorney General of the Republic of Palau;
- (c) “data” means representations, in any form, of information or concepts;

- (d) “document” means any record of information and any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device, and includes, but is not limited to:
- (1) anything on which there is writing, marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;
  - (2) anything from which sounds, images or writings can be produced, with or without the aid of anything else; or
  - (3) a map, plan, drawing, photograph or similar thing;
- (e) “foreign confiscation order” means an order, made by a court in a foreign State, for the confiscation or forfeiture of property in connection with or recovery of the proceeds of a serious offense;
- (f) “foreign restraining order” means a foreign court order made relating to a serious offense to restrain a person or persons from dealing with property;
- (g) “foreign state” means any country other than the Republic and every constituent part of such country which administers its own laws relating to international cooperation;
- (h) “interest,” in relation to property, means a legal or equitable estate in the property; or right, power or privilege in connection with the property, whether present or future and whether vested or contingent;
- (i) “person” means any natural or legal person;
- (j) “place” includes any land and any premises;
- (k) “premises” includes the whole or any part of a structure, building, aircraft, or vessel;
- (l) “proceedings” means:
- (a)[sic] any procedure conducted under the supervision of an authorized judicial officer in relation to any alleged or proven offense, and includes an inquiry, investigation, or preliminary or final determination of facts; or
  - (b)[sic] property derived from such offense;
- (m) “proceeds of crime,” except as otherwise provided herein, means fruits of a crime, or any property derived or realized directly or indirectly from a serious offense and includes, on a proportional basis, property into which any property derived or realized directly from the offense was later successively converted, transformed or intermingled,

as well as income, capital or other economic gains derived or realized from such property at any time since the offense;

(n) “property” means real or personal property of every description, whether situated in the Republic or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property; but does not include any clan, lineage, or family land located in the Republic,

nor any interest held by a legitimate bonafide purchaser or owner of property, real or otherwise, without notice of any illegal interest, in such property located in the Republic;

(o) “Republic” means the Republic of Palau;

(p) “serious offense” means an offense against a provision of:

(1) any law of the Republic which is a criminal offense punishable by imprisonment for more than one year;

(2) a law of a foreign state, in relation to acts or omissions, which had it occurred in the Republic would have constituted a criminal offense punishable by imprisonment for more than one year;

(q) “Supreme Court” means the Supreme Court of the Republic of Palau.

## **SUBCHAPTER II - MUTUAL ASSISTANCE**

### **Section 5. Authority to make and act on mutual legal assistance requests.**

(a) Consistent with the Palau Constitution, the Attorney General may make requests on behalf of the Republic to the appropriate authority of a foreign state for mutual legal assistance in any investigation commenced or proceeding instituted in the Republic, relating to any serious offense. The Attorney General shall make all such requests through the Minister of State of the Republic, submitting the name of the foreign State to which the request is being made, the nature of the request, and the nature of the criminal matter.

(b) Upon receipt by the Minister of State, and subsequent notification of the President, of a request from a foreign state for mutual assistance in any investigation commenced or proceeding instituted in that state relating to a serious offense, the Attorney General may:

(1) grant the request, in whole or in part, on such terms and conditions as he or she thinks fit provided however that no request for assistance under this or any other law of the Republic shall be granted unless the requesting foreign

state makes sufficient written assurance that they will cover all costs associated with the request;

(2) refuse the request, in whole or in part, on the ground that to grant the request would be likely to prejudice the sovereignty, security or other essential public interest of the Republic; or

(3) after consulting with the competent authority of the foreign state, postpone the request, in whole or in part, on the ground that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in the Republic.

(c) The President or his designee may refuse any request for mutual legal assistance from a country that does not afford substantially reciprocal privileges to the Republic of Palau, or upon determination that refusal of such a request is in the public interests of the Republic.

Section 6. Saving provision for other requests or assistance in criminal matters.

Nothing in this Act shall limit:

(a) the power of the Attorney General, apart from this Act, to make requests to foreign states or act on requests from foreign states for assistance in investigations or proceedings in criminal matters;

(b) the power of any other person or court, apart from this Act, to make requests to foreign states or act on requests from foreign States for forms of international assistance other than those specified in section 7; or

(c) the nature or extent of assistance in investigations or proceedings in criminal matters which the Republic may lawfully give to or receive from foreign states.

Section 7. Mutual legal assistance requests by the Republic of Palau. The requests which the Attorney General is authorized to make are that the foreign state:

(a) have evidence taken, or documents or other articles produced;

(b) obtain and execute search warrants or other lawful instruments authorizing a search for, and seizure of, relevant evidence;

(c) locate or restrain any property believed to be the proceeds of crime located in the foreign state;

(d) confiscate any property which is the subject of a confiscation order made under the Money Laundering and Proceeds of Crime Act of 2001;

- (e) transmit to the Republic any such confiscated property or any proceeds realized therefrom, or any such evidence, documents, articles or things;
- (f) transfer in custody to the Republic a person who consents to assist the Republic in the relevant investigation or proceedings;
- (g) provide any other form of assistance that involves or is likely to involve the exercise of a coercive power over a person or property; or
- (h) permit the presence of nominated persons during the execution of any request made under this Act.

Section 8. Contents of requests for assistance.

- (a) A request for mutual assistance shall:
  - (1) give the name of the authority conducting the investigation or proceeding to which the request relates;
  - (2) give a description of the nature of the criminal matter and a summary of the relevant facts and laws together with a copy of the laws referenced;
  - (3) give a description of the purpose of the request and of the nature of the assistance being sought;
  - (4) in the case of a request to restrain or forfeit assets believed on reasonable grounds to be located in the requested state, give details of the offense in question, particulars of any investigation or proceeding commenced in respect of the offense, and be accompanied by a copy of any relevant restraining or forfeiture order;
  - (5) give details of any procedure that the requesting state wishes to be followed in giving effect to the request;
  - (6) include a statement of any requests for confidentiality and the reasons for those requests;
  - (7) give the desired time frame for compliance with the request;
  - (8) where applicable, give details of the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is in the requested state; and
  - (9) give any other information that may assist in giving effect to the request.



- (b) A request for mutual assistance from a foreign state may be granted, if necessary after consultation, notwithstanding that the request does not comply with subsection (a).

Section 9. Foreign requests for an evidence-gathering order or a search warrant.

- (a) An authorized person of the foreign state may apply to the Supreme Court for a search warrant or an evidence-gathering order.
- (b) The Supreme Court may issue an evidence-gathering order or a search warrant where there is probable cause to believe that:
- (1) a serious offense has been or may have been committed against the laws of the foreign state;
  - (2) evidence relating to that offense may:
    - (A) be found in a building, receptacle or place in the Republic; or
    - (B) be able to be given by a person believed to be in the Republic;
  - (3) in the case of an application for a search warrant, it would not, in all the circumstances, be more appropriate to grant an evidence-gathering order.
- (c) A statement contained in the foreign request that a serious offense has been or may have been committed against the law of the foreign state is prima facie evidence of that fact.
- (d) An evidence-gathering order:
- (1) shall provide for the manner in which the evidence is to be obtained in order to give proper effect to the foreign request, unless such manner is prohibited in the Republic, and in particular, may require any person named therein to:
    - (A) make a record from data or make a copy of a record;
    - (B) attend court to give evidence on oath or otherwise until excused;
    - (C) produce to the Supreme Court or to any person designated by the Court, any thing, including any document, or copy thereof; or
  - (2) may include such terms and conditions as the Supreme Court considers desirable, including those relating to the interests of the person named therein or of third parties; and

- (3) shall only be issued subject to agreement by the requesting foreign state to bear all costs incurred by the Republic in connection therewith.
- (e) A person named in an evidence-gathering order may refuse to answer a question or to produce a document or thing where the refusal is based on:
- (1) a law currently in force in the Republic; or
  - (2) a privilege recognized by a law in force in the foreign state; or
  - (3) a law in the foreign state that would render the answering of that question or the production of that document or thing an offense in the person's own jurisdiction.
- (f) Where a person refuses to answer a question or to produce a document or thing pursuant to subsection (e)(2) or (3), the Supreme Court shall report the matter to the Attorney General who shall notify the foreign state and request the foreign state to provide a written statement on whether the person's refusal was well-founded under the law of the foreign state.
- (g) A person who, without reasonable excuse, refuses to comply with a lawful order of the Supreme Court, or who having refused pursuant to subsection (e), continues to refuse notwithstanding the admission into evidence of a statement that the refusal is not well-founded, commits a contempt of court and may be punished accordingly.
- (h) A search warrant shall be in the usual form in which a search warrant is issued in the Republic, varied to the extent necessary to suit the case.
- (i) No document or thing seized and ordered to be sent to a foreign state shall be sent until the Attorney General is satisfied that the foreign state has agreed to comply with any terms or conditions imposed.
- (j) The Supreme Court shall be authorized to adopt, recognize and enforce foreign court orders certified or under seal, which shall have the rebuttable presumption of validity.

Section 10. Foreign requests for consensual transfer of detained persons.

- (a) Where the Attorney General approves a request of a foreign state to have a person, who is detained in the Republic by virtue of a sentence or court order transferred to a foreign state to give evidence or assist in an investigation or proceeding in that state relating to a serious offense, an authorized person may apply to the Supreme Court for a transfer order.
- (b) The Supreme Court may order the transfer of a detained person if after if [sic] any documents filed or information given establishes that the detained person consents to the transfer.

(c) A transfer order made under subsection (b):

- (1) shall set out the name of the detained person and the person's current place of confinement;
- (2) shall order that the detained person be delivered into the custody of a person who is designated in the order or who is a member of the class of persons so designated;
- (3) shall order the person taking custody of the detained person to transport the detained person to the foreign state and, on return, to return that person to a place of confinement in the Republic of Palau specified in the order, or to such other place of confinement in the Republic specified in the order;
- (4) shall state the reasons for the transfer; and
- (5) shall fix the period of time at or before the expiration of which the detained person must be returned, unless varied for the purposes of the request by the Attorney General.

(d) The time spent in custody by a person pursuant to a transfer order shall count toward any sentence, so long as the person remains in such custody.

Section 11. Detention of persons transferred to the Republic.

(a) The Attorney General may by written notice authorize:

- (1) the temporary detention in the Republic of a person in detention in a foreign state who is to be transferred from the Republic pursuant to a request under section 7(f), for such period as may be specified in the notice; and
- (2) the return of the person to the custody of the foreign state when his or her presence is no longer required.

(b) A person in respect of whom a notice is issued shall so long as the notice is in force:

- (1) be permitted to enter and remain in the Republic for the purposes of the request, and be required to leave the Republic when no longer required for those purposes, notwithstanding any Republic law to the contrary; and
- (2) while in custody in the Republic for the purposes of the request, be deemed to be in lawful custody.

(c) The Attorney General may at any time vary a notice, and where the foreign state requests the release of the person from custody, either immediately or on a specified date,

the Attorney General shall direct that the person be released from custody accordingly; provided, however, that the Attorney General may require the immediate departure of that person from the Republic if such departure is determined to be in the best interest of the nation.

(d) Any person who escapes from lawful custody while in the Republic pursuant to a request under section 7(f) may be arrested without warrant by any authorized person and returned to the custody authorized under subsection (a)(1) of this section.

(e) Where a foreign country has requested that a person be detained in the Republic in the course of transit between the foreign country and a third country and the Attorney General grants the request, the provisions of this section shall apply.

Section 12. Safe conduct guarantee.

(a) Where a person, whether or not a detained person, is in the Republic in response to a request by the Attorney General to a foreign state under this Act for such person to give evidence in a proceeding or to assist in an investigation, prosecution or related proceeding, the person shall not, while in the Republic, be detained, prosecuted or punished or subjected to civil process, in respect of any act or omission that occurred before the person's departure from the foreign state pursuant to the request. Provided however, this section shall not preclude the person by voluntary agreement and consent, from entering into a stipulated settlement or resolution of any criminal charges pending in the Republic, or of any civil or criminal matter.

(b) Subsection (a) ceases to apply to the person when the person leaves the Republic, or has had the opportunity to leave, but remains in the Republic for 10 days after the Attorney General has notified the person in writing that he or she is no longer required for the purposes of the request.

Section 13. Foreign requests for Republic restraining orders.

(a) Where a foreign state requests the Attorney General to obtain a restraining order against property, except clan, lineage, or family land, or any interest held by a legitimate bona fide purchaser or owner without notice of an illegal interest in the property; and where criminal proceedings have begun in the foreign state in respect of a serious offense, and there is probable cause to believe that the property relating to the offense or belonging to the defendant or the defendant's coconspirators is located in the Republic; the Attorney General may apply to the Supreme Court for a restraining order.

(b) Upon application of the Attorney General, the Court may make a restraining order in respect of the property, as if the serious offense that is the subject of the order had been committed in the Republic.

Section 14. Requests for enforcement of foreign confiscation or restraining orders.

- (a) Where a foreign state requests the Attorney General to arrange for the enforcement of a foreign restraining order or foreign confiscation order, the Attorney General may apply to the Supreme Court for entry and enforcement of the order.
- (b) The Supreme Court shall enter and enforce a foreign restraining order, if the Court is satisfied that at the time of entry and registration, the order is in force in the foreign state.
- (c) The Supreme Court shall enter and enforce a foreign confiscation order which is legally capable of enforcement in the Republic, if the Court is satisfied that:
  - (1) at the time of entry and enforcement, the order is in force in the foreign state and is not subject to appeal; and
  - (2) where the person the subject of the order did not appear in the confiscation proceedings in the foreign State, that:
    - (A) the person was given sufficient notice of the proceedings; or
    - (B) the person had absconded or had died before such notice could be given, and if the person died, the decedent's estate was given fair notice of the proceedings.
- (d) A statement contained in the foreign request that the elements provided in subsection (c) is prima facie evidence of those facts, without proof of the signature or official character of the person appearing to have signed the foreign request.
- (e) Where a foreign restraining order or foreign confiscation order is entered for enforcement, a copy of any amendments made to the order in the foreign state (whether before or after entry and enforcement), may be entered and enforced in the same way as the order, but shall not have effect for the purposes of the Money Laundering and Proceeds of Crime Act of 2001, until they are so entered and enforced.
- (f) The Supreme Court shall, on application by the Attorney General rescind entry of:
  - (1) a foreign restraining order, if it appears to the Court that the order has ceased to have effect.
  - (2) a foreign confiscation order, if it appears to the Court that the order has been satisfied or has ceased to have effect.
- (g) A facsimile copy of a duly authenticated foreign restraining or confiscation order, or amendment made to such an order, shall be regarded as the same as the duly authenticated foreign order for 21 days, but entry and registration effected by means of a

facsimile ceases to have effect at the end of the 21 days unless a duly authenticated original of the order has been entered and registered.

Section 15. Foreign requests for the location of proceeds of crime. Where a foreign state requests the Attorney General to assist in locating property believed to be the proceeds of a serious crime, the Attorney General may authorize any application of the Money Laundering and Proceeds of Crime Act of 2001, for the purpose of acquiring the information sought by the foreign State.

Section 16. Sharing confiscated property with foreign states. The Attorney General may enter into an arrangement with the competent authorities of a foreign state, in respect of money laundering and proceeds of crime, for the reciprocal sharing with that state of such part of any property realized in the foreign state as a result of action taken by the Attorney General or in the in the Republic as a result of action taken in the Republic.

### **SUBCHAPTER III - MISCELLANEOUS**

Section 17. Privilege for foreign documents.

- (a) A document sent to the Attorney General by a foreign State in accordance with a request pursuant to this Act is privileged and no person shall disclose to anyone the document, its purport, or any part of the contents, before the document, in compliance with the conditions on which it was so sent, is made public or disclosed in the course of and for the purpose of any proceedings under this Act.
- (b) Except to the extent required under this Act to execute a request by a foreign state for mutual assistance in criminal matters, no person shall disclose the fact that the request has been received or the contents of the request.
- (c) Violation of this section is a felony offense, punishable by imprisonment for a maximum of ten years or a maximum fine of \$50,000, or both, provided, however, in the case of a corporation, company, commercial enterprise, commercial entity or other legal person, the maximum fine shall be increased to \$250,000.

Section 18. Restriction on use of evidence and materials obtained by mutual assistance. No information, document, article or other thing obtained from a foreign state pursuant to a request made under this Act shall be used in any investigation or proceeding other than the investigation or proceeding disclosed in the request, unless the Supreme Court so permits, after considering input from the foreign state on the other usage.

Section 19. Deposit of confiscated proceeds of drug crime. Any proceeds of drug-related crime which have been:

- (a) confiscated in a foreign state pursuant to a request by the Republic under section 7(d);

(b) confiscated in the Republic pursuant to a request by a foreign state under section 14(a), to the extent available under any sharing of confiscated property arrangement referred to in section 16, or otherwise, shall be deposited in accounts of the Republic as follows:

- (1) 55% in the Fund for Drug Abuse Prevention and Control, established under the Controlled Substances Act, 34 PNC Division 4;
- (2) 30% in the Retirement Fund, 41 PNC 731, for payment in equal proportions of old age insurance benefits, 41 PNC 753, and disability insurance benefits, 41 PNC 754;
- (3) 15% in an account for use by the Palau National Olympic Committee.

**Section 2. Effective Date.** This Act shall take effect upon its approval by the President of the Republic, or upon becoming law without such approval, except as otherwise provided by law.

PASSED: June 19, 2001

Approved this \_\_\_\_ day of June, 2001.

Tommy E. Remengesau, Jr., President Republic of Palau

RPPL No. 6-5 (Intro. as H.B. No. 6-72-3S, HD1, SD7)

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO  
ENACT AS FOLLOWS.

**Section 1.** Amendment. Title 18 of the Palau National Code is hereby amended by the addition of a new Chapter 10.1 to provide as follows:

“CHAPTER 10.1 THE EXTRADITION AND TRANSFER ACT OF 2001

SUBCHAPTER I

GENERAL PROVISIONS

Section 1. Short title. This Act shall be known and may be cited as the ‘Extradition and Transfer Act of 2001.’

Section 2. Purpose. The purposes of this Act are: to facilitate the procedures for extradition of persons from a foreign state to the Republic of Palau, and vice versa; to promote the rehabilitation and effective reintegration of criminal offenders into society by transferring convicted citizens to their home countries to serve a criminal sentence; to declare that the Republic shall have an obligation to extradite any person who has committed an extraditable offense in an extradition country, no matter what their nationality or citizenship, where the requirements of this Act have been met, and where there is no valid impediment to extradition under this Act, to promote mutual cooperation in law enforcement in the Pacific region and internationally to bring fugitives to justice; and to declare that to that end, this Act should be liberally construed, together with the following related legislation the Mutual Assistance in Criminal Matters Act; the Money Laundering and Proceeds of Crime Act; and the Foreign Evidence Act.

Section 3. Supersession. This Act shall not supersede the extradition provisions of the Compact of Free Association, whose provisions shall be deemed an extradition treaty for the purposes of this Act. Any extradition treaty or international agreement to which the Republic was a party before the effective date of this Act remains in force and shall be deemed an extradition treaty for the purposes of this Act. In the case of conflict, the provisions of the extradition treaty shall take precedence over the provisions of this Act.

Section 4. Definitions. In this Act:

- (a) “Attorney General” means the Attorney General of the Republic of Palau;
- (b) “Comity Country” means a foreign state granted or seeking a courtesy or a special privilege to be granted with respect to extradition or the transfer of a convicted person notwithstanding the fact that such foreign state does not otherwise qualify under the Act as an extradition country because of its status as a Forum country or a treaty country;



- (c) “Document” means any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system, or other device, and any record of information, and includes, but is not limited to, anything on which there is writing, marks, figures, symbols, or perforations having meaning for persons qualified to interpret them, anything from which sounds, images or writings can be produced, with or without the aid of anything else, a map, plan, drawing, photograph or similar thing;
- (d) “Extradition country” means any treaty country with which the Republic has entered into an extradition treaty;
- (e) “Extradition request” means a written petition made by one country to another country for the surrender of a particular person for purposes of prosecution or punishment for a criminal offense;
- (f) “Extradition treaty” means a written pact, protocol, agreement, convention, or covenant, entered into or ratified by the Republic that relates wholly or partly to the surrender of persons accused or convicted of criminal offenses;
- (g) “Foreign escort officer” means an official representative of the foreign state to which a person is to be surrendered or transferred for service of the person’s sentence, conditional sentence, or conditional release;
- (h) “Foreign state” means any country other than the Republic and every constituent part of such country which administers its own laws relating to criminal offenses;
- (i) “Forum country” means a member of the Pacific Islands Forum;
- (j) “Interpol” means the International Criminal Police Organization;
- (k) “Judge” means a person who has been duly appointed as a judge or justice of the Supreme Court of the Republic, unless otherwise noted;
- (l) “Law enforcement officer” means a member of the Bureau of Public Safety, Ministry of Justice of the Republic of Palau;
- (m) “Person” means and includes any natural or legal person sought for extradition;
- (n) “Political offense” means any charge or conviction based on a person’s political beliefs or affiliation where the conduct involved does not otherwise constitute a violation of that country’s criminal laws;
- (o) “Prison” means any place for the confinement or custody in the course of the administration of justice, and includes a jail, police cell, or any place where the personal liberty of a person to voluntarily depart is restricted;

- (p) “Proceeding” or “proceedings” means any procedure conducted by or under the supervision of an authorized judicial officer of any country, and includes an inquiry, investigation, or preliminary or final determination of facts;
- (q) “Proceeds of crime” means any property derived or realized directly or indirectly from a serious offense or an extraditable offense and includes, on a proportional basis, property into which any property derived or realized directly from the offense was later successively converted, transformed, or intermingled, as well as income, capital, or other economic gains derived or realized from such property at any time since the offense;
- (r) “Property” means currency and all other real or personal property of every description, wherever situated, whether tangible or intangible, and includes an interest in any such property but does not include any clan, lineage, or family land located in the Republic, nor any interest held by a legitimate bona fide purchaser or owner of property, real or otherwise, without notice of any illegal interest, in such real property located in the Republic,
- (s) “Requesting country” means a foreign state that is seeking the surrender of a person for purposes of prosecution or punishment for a criminal offense allegedly committed in such foreign state;
- (t) “Serious offense” means a violation of any law of the Republic which is a criminal offense punishable by a term of imprisonment for more than one year, or a criminal law of the requesting country, in relation to acts or omissions, which had they occurred in Republic would have constituted a criminal offense punishable by a term of imprisonment for more than one year;
- (u) “Supreme Court” means the Supreme Court of the Republic and all its divisions;
- (v) “Surrender” means the act by which public authorities deliver a person charged with or convicted of a crime and who is found within their jurisdiction to the authorities within whose jurisdiction it is alleged that the crime was committed;
- (w) “Surrender warrant” means an official authorization; issued by a judge ordering the surrender of a person to a requesting country, requiring any person having custody of the person to relinquish custody to the officer possessing the warrant, authorizing handing the person over to the custody of a foreign escort officer, and authorizing the foreign escort officer to transport the person to the requesting country for purposes of prosecution and punishment for a criminal offense;
- (x) “Tainted property” means property used in, or in connection with, the commission of a serious or extraditable offense or the proceeds of crime;
- (y) “Treaty country” means a foreign state with which the Republic has entered into an extradition treaty, and which is listed in regulations promulgated under this Act;

(z) “Writing” includes facsimiles, electronic mail, and any other means of communication that is capable of being reproduced in printed form.

(aa) A reference in this Act to the law of the Republic or any foreign state or country, includes the law of any part of the Republic or any part of that foreign state or country.

Section 5. Extraditable offenses.

(a) An extraditable offense is an offense which occurred in the requesting country and is or would be a criminal offense under the laws of both the requesting country and the Republic or the receiving country and the transferring country, or their political subdivisions, punishable by imprisonment or other deprivation of liberty for over one year.

(b) In determining whether an offense is an extraditable offense under this Act, terminology and categorization are not dispositive, and the totality of the acts or omissions alleged shall be considered in determining the constituent elements of the offense. Any part of such act, failure to act, or omission may be taken into account.

(c) Where there is no statutory penalty, the level of penalty that can be imposed for the offense by any court shall be taken into account.

(d) An offense may be an extraditable offense if it relates to taxation, customs duties, or other revenue matters or relating to foreign exchange control of a foreign state even if the Republic does not impose a duty, tax, tariff, or control of that kind, provided such offense would not be unconstitutional under the laws of the Republic.

Section 6. Extradition objections. An extradition objection arises automatically where:

- (a) the offense is a political offense;
- (b) substantial grounds suggest that the prosecution or punishment is due to race, religion, nationality, political opinion or affiliation, gender, or status, or that the proceedings are prejudiced because of any of these factors;
- (c) the offense arises under a foreign state’s military law but is not a criminal offense in the Republic;
- (d) the person has been convicted of the offense in the Republic and has not escaped or breached any condition of release;
- (e) the person is immune from prosecution or punishment due to lapse of time, amnesty, or any other reason under the requesting country’s laws;
- (f) the person has been acquitted, pardoned, or duly punished for the offenses, in the Republic or the foreign state;

- (g) judgment was entered in the person's absence, and the requesting country's law does not entitle the person to raise any defenses upon his or her return;
- (h) a prosecution for the offense is pending in the Republic;
- (i) the offense was not committed in the requesting country and the Republic has no jurisdiction over that offense committed in similar circumstances outside of the Republic;
- (j) the offense was committed, even partially, within the Republic, and the Attorney General confirms that prosecution will be instituted;
- (k) the offense is punishable by death, and there are insufficient assurances that the death penalty will not be imposed or carried out;
- (l) the person is likely to be tried or sentenced by a court not authorized by law;
- (m) the person is likely to be subjected to torture or cruel and inhumane treatment or punishment, including inhumane prison conditions. Conditions in countries that have acceded to the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment adopted on December 10, 1984, or the International Covenant on Civil and Political Rights, adopted on December 16, 1966, are presumed humane, but can be rebutted by clear and convincing evidence.
- (n) If the requesting government is either authoritarian in nature or non-democratic in form, no citizen of Palau or person of Palauan ancestry shall be extradited to that country.
- (o) If the offense is punishable by death, no citizen of Palau or person of Palauan ancestry shall be extradited to that country.

## SUBCHAPTER II

### EXTRADITION OF PERSONS TO FOREIGN STATES

#### Section 7. Obligation to extradite.

- (a) When surrender of a person who is not a Palauan citizen or national or of Palauan ancestry is sought for an extraditable offense and where the requirements of this Act have been satisfied and no valid and legally sustainable extradition objections preclude surrender, the Republic has an obligation to extradite the person.
- (b) Neither the Republic nor any extradition country shall be bound to extradite its own citizens or nationals, but may grant extradition if, in the discretion of the court, after notice to the party sought to be extradited and a hearing, extradition is deemed proper. If the requested government denies extradition solely on the basis of citizenship or

nationality, it shall submit the case to its competent authorities for purposes of prosecution.

(c) This chapter shall be liberally construed to effect the purposes of this Act.

Section 8. Authority of the Minister of Justice. The Minister of Justice or his or her designee shall be authorized to:

- (a) receive extradition requests directly from foreign states or Interpol;
- (b) determine, pursuant to this Act, whether and what action to take on an extradition request;
- (c) determine whether the requesting country is an extradition country, and if not, whether to designate or certify it as such;
- (d) impose conditions on the requesting country for the treatment of the person;
- (e) apply to the Supreme Court for warrants of arrest, provisional arrest, surrender, and for applications for re-extradition;
- (f) appear at hearings authorized by this Act on behalf of a requesting country;
- (g) institute extradition proceedings,
- (h) take any action authorized in this section on behalf of a requesting country, upon receiving notice of an extradition request or an intent to make an extradition request in the immediate future, and the person is believed to be physically present or about to enter the Republic in the foreseeable future;
- (i) take any other legal action deemed necessary in furtherance of the purposes of this Act.

Section 9. Extradition requests.

- (a) Requests shall be made in writing, in the English language, and be accompanied by the necessary supporting documents
- (b) Upon receipt of the extradition request, the Minister of Justice or his or her designee shall notify the President, review and consider the request, determine whether the request meets this Act's requirements, and promptly communicate the determination to the requesting country, providing a written statement of any deficiencies in the request.
- (c) The Minister of Justice or his or her designee shall determine whether to institute extradition proceedings, but shall not do so unless:

- (1) the requesting country has issued an arrest warrant for the extraditable offense;
  - (2) the person named in the warrant is physically present or about to enter the Republic in the foreseeable future;
  - (3) the requesting country is an extradition country;
  - (4) the requesting country has produced or will produce in the immediate future the necessary supporting documents;
  - (5) no extradition objections or other law precludes the person's surrender;
  - (6) no other valid and legally justifiable cause exists to preclude surrender of the person.
- (d) Where the extradition request meets some but not all of this Act's requirements when it is made, the Minister of Justice or his or her designee may provisionally institute extradition proceedings and take any necessary action authorized in Section 8 provided that the Minister of Justice or his or her designee is satisfied that any defect or deficiency is readily curable and that the requesting country will immediately act to cure such defect or deficiency.
- (e) The President or his or her designee may refuse any request from a country that does not offer substantially similar privileges to the Republic.

Section 10 Multiple extradition requests.

- (a) When the Minister of Justice or his or her designee concurrently receives two or more extradition requests for the same person, the Minister of Justice or his or her designee shall have the discretion to decide the order in which to consider the requests.
- (b) The Minister of Justice or his or her designee shall notify each requesting country of the multiple requests and shall communicate the order in which the requests will be considered.
- (c) The Minister of Justice or his or her designee shall consider all circumstances of the case, particularly:
  - (1) the relative seriousness of the offenses;
  - (2) the time and place of each offense;
  - (3) the person's citizenship, national status, and country of usual residence;

- (4) the likelihood of the denial of an extradition request for any reason, and
- (5) the possibility of re-extradition of the person to a third foreign state.

Section 11. Supporting documents.

- (a) An extradition request shall be accompanied by:
  - (1) as accurate and complete a description of the person as possible, including information on identity, nationality, and location;
  - (2) a detailed statement of the acts or omissions constituting the extraditable offense, including details of the time and place of commission;
  - (3) the text of the law creating the offense, including any applicable statutes of limitations;
  - (4) the text of the law prescribing the maximum penalty for the offense, or if the penalty is not prescribed by statute, a statement defining the maximum penalty that can be imposed.
- (b) An extradition request for a person charged with but not yet convicted of an offense shall be accompanied by the original or an authenticated copy of the arrest warrant issued by an authorized judicial authority of the requesting country and by a description of the evidence providing probable cause supporting the belief the person sought to be extradited committed the offense;
- (c) An extradition request for a person convicted of the offense shall be supported by the original or authenticated copy of the arrest warrant issued by an authorized judicial authority of the requesting country, the original or an authenticated copy of the judgment of the conviction, evidence establishing that the person is the person who was convicted, and a statement of whether the sentence has been imposed and if imposed, a copy of the sentence and a statement showing the portion of the sentence remaining to be served.
- (d) Where an extradition request relates to a person who has been convicted of an offense in his or her absence, in addition to the documents described in subsection (c), the request shall be accompanied by a statement defining the legal means available to the person to prepare defenses and to have the case retried in the person's presence if the person is surrendered.
- (e) Where an extradition request or a statement of intent to make an extradition request is received, and a substantial likelihood exists that the person may flee the Republic unless arrested, a facsimile or electronically transmitted copy of the arrest warrant or judgment may be substituted, provided that the requesting country produces an original or authenticated copy within 10 business days.

(f) All supporting documents shall be in English or accompanied by an authentic translation into English, and shall be consistent with the Palau Constitution and all evidentiary and procedural provisions of the Palau National Code.

(g) If the Minister of Justice or his or her designee determines that the supporting information or documentation is defective or deficient in any respect, the Minister of Justice or his or her designee may request the additional information and specify a reasonable time for its receipt.

#### SUBCHAPTER IV

#### SEARCH, SEIZURE AND TRANSIT

##### Section 32. Application of other laws.

(a) In addition to the procedures set forth in this Act, the provisions of chapter 3 of title 18 of the Palau National Code and the Money Laundering and Proceeds of Crime Act shall apply to any search, seizure, arrest, confiscation, or other activity authorized under this chapter.

(b) Any action authorized by the Money Laundering and Proceeds of Crime Act shall be authorized under this Act, including confiscation of tainted property, pecuniary penalties, search and seizure of tainted property, the issuance of restraining orders and production orders, and realization of property.

##### Section 33. Search for and seizure of tainted property in relation to foreign offenses.

(a) Where an extradition country requests assistance with the location or seizure of property suspected to be evidence or tainted and related to an extraditable offense, the Money Laundering and Proceeds of Crime Act shall apply, provided that the Minister of Justice or his or her designee has authorized the giving of assistance to the foreign state under the Mutual Assistance in Criminal Matters Act.

(b) Subsection (a) shall apply regardless of whether an extradition request has already been made or received.

Section 2. Effective date. This Act shall take effect 120 days after promulgation of regulations and after approval by the President of the Republic.

PASSED: June 19, 2001

Approved this 19th day of June, 2001. Tommy e. Remengesau, Jr., President Republic of Palau



RPPL No. 6-3 (Introduced as Senate Bill No. 6-115, SD2, HD1, CD1, PD1),  
SIXTH OLBIIL ERA KELULAU RPPL No. 6-3

As amended SEVENTH OLBIIL ERA KELULAU , RPPL No. 7-41, Thirteenth  
Regular Session, January 2008 (Intro. As H.B. No. 7-192-13, HD1, SD1)

## AN ACT

To amend the Palau National Code by adding a new Title 26.10, being the Financial Institutions Act of 2001; to provide for the regulation of banking and other financial institutions in the Republic of Palau; to exempt banks from the Foreign Investment Act; to amend 12 PNC 207(a); to amend 12 PNC Chapter 2; and for related purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIIL ERA KELULAU DO  
ENACT AS FOLLOWS:

Section 1. Preamble. The Olbiil Era Kelulau of the Republic of Palau (hereinafter referred to as the “OEK”), endeavoring to strengthen the economy in the Republic of Palau by providing measures to protect the interests of consumers of financial services, to prevent systemic risk to the financial system, to provide sufficient scope for market forces to operate in the field of financial services, and to protect the reputation of the Republic in the international financial community, and establishing rules for the licensing, supervision and regulation of financial institutions by the Financial Institutions Commission of the Republic of Palau, hereby finds it to be in the best interest of the Republic to enact laws governing banks and financial institutions operating either in the Republic or under a grant of authority by the Republic.

Section 2. Amendment. The Palau National Code is hereby amended by the addition of Title 26.10, to be entitled “Financial Institutions Act of 2001” and to provide as follows:

### “Financial Institutions Act of 2001

#### Chapter I. General Provisions

Section 1. Scope of operation of this Act.

(a) This Act shall apply to banks, securities brokers, and securities dealers (hereinafter referred to as “financial institutions”), their shareholders, administrators, employees, agents and affiliated entities, and applicants for bank credit.

(b) Persons other than financial institutions who are in violation of provisions of section 3 shall be subject to the penal provisions of Chapter VII.

Section 2. Definitions. Wherever used in this Act, the following terms shall have the following meanings:

- (a) "Administrator" means any person who is an officer of a financial institution or other juridical person, including any member of the board of directors or the Audit Committee, or the head of a department of the organization but shall only apply to a person who is regularly employed at the Palau office of the financial institution.
- (n) "Financial institutions" means banks, securities brokers, and securities dealers.
- (o) "Foreign financial institution" or "foreign bank" or "foreign branch bank" means a financial institution organized under the laws of another jurisdiction with a branch office or subsidiary in the Republic of Palau.
- (p) "Guidance" means non-obligatory recommendations issued for the information of financial institutions.
- (v) "Regulation" means a general obligatory directive in implementation of this Act pursuant to section 79 issued to one or more classes of financial institutions.

Section 8. International cooperation. The Commission is the official agency for information as to the status of any entity licensed or claiming or purporting to be licensed by the Republic of Palau to act as a bank. The Commission is authorized to the extent set forth in the Act and under Palau law to cooperate and exchange information with agencies of foreign governments and international agencies. The grant of a license under this Act shall constitute consent of the financial institution to the release and exchange of information between the Commission and any law enforcement, regulatory, or supervisory authorities of any foreign jurisdiction's government in which the financial institution may operate or otherwise conduct business.

Section 24. Secrecy.

- (a) No person who serves or has served as a member of the Commission or staff or as an auditor or agent of the Commission nor any other person shall, in a manner unauthorized by law: (1) permit access to, disclose or publicize nonpublic confidential information which was obtained in the performance of his or her duties for the Commission; or (2) use such information, or allow such information to be used, for personal gain.
- (b) Upon the Commission's receipt of confidential information from financial institutions pursuant to this Act, the Commission and all related employees and agencies shall be prohibited from disclosing or making known the existence of the information under review and under no circumstances may any person required to transmit confidential information or any other person having knowledge thereof communicate such confidential information to any natural or legal person other than a person serving as a member of the Commission or staff, or as an auditor or agent of the Commission, or as a technical advisor to the Commission, or in accordance with international agreements and obligations of the Republic of Palau.

(c) Notwithstanding subsections (a) and (b), such persons may disclose confidential material information outside the Commission, in accordance with procedures established by the Commission, but only if:

- (1) in accordance with the prior express written consent of the person or financial institution to whom the information relates; or
- (2) as required by law or on the order of a court of competent judicial authority;

(d) Members of the Commission and staff of the Commission shall execute an oath of secrecy in accordance with this section. Upon a finding by a court of competent jurisdiction that this oath has been violated, the violator shall be dismissed from office. The violator shall be subject to a fine not exceeding fifty thousand dollars (\$50,000) or imprisonment for a period not exceeding ten years, or both, upon a finding by a court of competent jurisdiction that a person has violated the oath.

Section 30. Licensing of existing financial institutions.

(a) All banks existing and operating in the Republic of Palau as of the effective date of this Act shall be and are licensed to engage in all of the financial activities listed in section 52. Existing and operating securities brokers and securities dealers are licensed to engage in the financial activities listed in section 52(a)(15), (16), and (17) only.

(b) (1) The institutions referred in to subsection (a) shall present and deliver to the Commission the following documents within 180 days of the effective date of this Act:

- (A) a copy of the financial institution's corporate charter or the equivalent;
- (B) an original certificate of good standing from the Registrar of Corporations;
- (C) if applicable under law in effect prior to the effective date of this Act, a copy of a Foreign Investment Approval Certificate;
- (D) copies of the institution's current national and state business licenses;
- (E) certification of good standing from the corporate registrar or equivalent agency of the jurisdiction in which the foreign corporation is domiciled;
- (F) affidavit of a duly authorized officer of the financial institution, under penalty of perjury, that the license of the financial institution is valid and not

under suspension or cancellation by the jurisdiction in which the foreign corporation is domiciled; and

(G) a license fee of five thousand dollars (\$5,000.00).

(2) Failure to submit the documents listed in subsection (b)(1) will result in the automatic suspension without notice of the financial institution's license to operate in any capacity covered by this Act until all documents have been submitted to the Commission. If within 180 days of the effective date of this Act an existing financial institution has not submitted the documents listed in subsection (b)(1), the institution will be regarded as unlicensed and must apply for a license pursuant to this Act.

Section 40. Restrictions on ownership and holdings.

(a) To have legal effect, the transfer, stemming out of a single transaction or a series of related transactions, of an equity interest in a financial institution licensed in the Republic of Palau shall require the prior written authorization of the Commission if, as a result of such transfer, any one person or number of related persons acting in concert would, directly or indirectly hold at least 20% interest or a controlling interest in such financial institution. In the event that transfer is for an interest of less than 20%, or if it is less than a controlling interest, prior to the transfer, the seller or transferor shall notify the Commission of the proposed sale or transfer and provide such information about the sale or transfer, and the prospective purchaser or transferee, as may be reasonably required by the Commission. Once notice of the proposed sale or transfer has been provided to the Commission, the Commission shall, within 45 days, either approve the sale or transfer, deny the sale or transfer, or request further information regarding the sale or transfer or proposed purchaser or transferee. If the Commission takes no action within 45 days, the sale or transfer shall be deemed approved. Any transfer of less than 5% in a financial institution whose shares are publicly traded on a stock exchange acceptable to the Commission shall be exempt from this requirement of prior Commission notification. Decisions shall be based upon whether, in the determination of the Commission, the qualifications, experience, and integrity of the proposed shareholders are appropriate for their significant ownership of the financial institution. Any authorization by the Commission to approve the transfer shall not be unreasonably withheld.

(b) No Palau bank shall, alone or in concert with one or more other persons, directly or indirectly: (1) hold an equity interest in a person or undertaking that is engaged in other than financial activities that either represents a significant interest or exceeds as to its net current value the equivalent of fifteen percent (15%) of the bank's capital; or (2) permit the aggregate net current value of all such equity interests to exceed the equivalent of fifty percent (50%).

(c) No such authorization under subsection (b) shall be required for:

- (1) equity interests that have been acquired in lieu of repayment of credit granted by the bank, in which case the bank shall entirely dispose of such equity interests within one year from the date they are acquired or within such longer time period as the Commission may decide, not exceeding two years; or
- (2) equity interests held as an agent.

Section 44. Quality of administrators. All persons elected or appointed as administrators of a financial institution must be of good repute and must meet the criteria established by regulation of the Commission regarding qualifications, experience, and integrity.

Section 47. Secrecy.

- (a) Present and past administrators, employees, and agents of a financial institution shall keep secret, and not to use for personal gain or gain by other than the financial institution that they serve or have served, or permit to be examined by others, any non-public information that they obtained in the course of their services to the financial institution.
- (b) The information described in subsection (a) may be disclosed where required by law to the Commission, including the auditors appointed by it, and when the protection of the financial institution's own interest in legal proceedings requires disclosure.

Section 48. Prevention of money laundering.

- (a) No financial institution shall conceal, convert, or transfer cash or other property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illegal origin of the property or shall knowingly assist any person who is involved in such activity to evade the legal consequences of his or her action.
- (b) The knowledge described in subsection (a) may be inferred from objective factual circumstances.

Section 49. Reporting of suspicious transactions and compliance with money laundering and counter terrorism financing standards.

- (a) A financial institution shall not carry out a transaction that appears to have an unlawful purpose or it suspects to be related to a serious criminal activity until it submits a confidential written report regarding the transaction that provides information as to the origin and destination of the money, the purpose of the transaction, and the identity of the transacting parties to the FIC and the Financial Intelligence Unit (FIU). The FIU may give instructions not to execute the transaction. Where a transaction is suspected to be related to a serious criminal activity and where a delay in carrying out the transaction is

impossible or is likely to frustrate efforts to pursue the beneficiaries of such transaction, the financial institution shall inform the FIC and the FIU in writing immediately afterwards. For purposes of this Section, “serious criminal activity” includes any felony or other crimes of moral turpitude and such other activities as the FIU may determine by regulation. The FIC shall regularly examine all financial institutions Anti-Money Laundering and Counter Financing of Terrorism (hereinafter “AMLCFT”) procedures and reporting standards. Such examinations may, in the sole discretion of the FIC, be conducted as an on-site or offsite examination, or both. Any additional costs resulting from the examination shall be borne by the financial institution. In the event that a Financial Institution’s AMLCFT procedures and reporting has been assessed either by a private entity acceptable to the FIC or by a governmental entity acceptable to the FIC, the FIC may accept such report in lieu of its report.

(b) With regard to any information provided to or requested by the FIU or the FIC for the purposes of complying with the MLPCA or any money laundering or financing of terrorism law of the Republic of Palau, or information disclosed in relation to a suspicious transaction, a financial institution shall not disclose to any person, other than a court or other person authorized by law, that information has been transmitted to or requested by the Commission, the FIU or other authorities, that an investigation is being carried out, or that instructions not to execute a transaction are being carried out.

(c) When a financial institution provides information that is referred to in subsection (b) in good faith, the financial institution shall be exempted from liability of any kind for complying with this section and/or for breach of any restriction on disclosure of information, except as provided in subsection (b), regardless of the result of the communication.

(d) For the purposes of this section, “financial institution” includes the administrators, employees, and shareholders of a financial institution.

#### Section 61. Reports and examination.

(a) The Commission shall regularly conduct on-site examinations of the operations and affairs of every financial institution, and where the Commission so specifies, foreign branches of any Palau financial institutions, by examiners of the Commission or auditors appointed by the Commission. No one shall attempt to harass, intimidate, or exert undue influence on an examiner of the Commission or the auditors appointed by it.

(b) The primary purpose of any audit or examination under subsection (a) shall be to determine whether: (1) a financial institution is in a safe and sound financial condition; (2) the requirements of this Act, rules and regulations adopted by the Commission, and other applicable laws are being observed by the financial institution; and (3) the business of the financial institution is being operated in a lawful and prudent manner.

(c) For the purpose of determining the condition of a financial institution and its compliance with this Act and regulations adopted by the Commission in the course of an

examination made under subsection (a), the Commission may cause an examination to be made of any affiliates of the financial institution in the Republic of Palau to the same extent that an examination may be made of the financial institution.

Section 62. Production of records and information for examiners and auditors.

(a) Every financial institution and every affiliate of such financial institution shall, pursuant to an examination conducted under section 61, produce for the inspection of any examiner or auditor duly authorized by the Commission to examine the financial institution, at such times and in such places as the examiner or auditor may specify (being times and places which, in the opinion of the examiner or auditor, would not be detrimental to the conduct of the normal daily business of such financial institution), all books, minutes, accounts, cash, securities and investments, documents and vouchers in their possession or custody, relating to their business and shall supply all information concerning their business as may reasonably be required by such examiner or auditor within such time as the examiner or auditor may specify. Any request for records regularly maintained at a home office outside the Republic of Palau must be produced within 30 days from the date of the request.

(b) If any documents are not produced or requested information is not supplied in accordance with subsection (a), the defaulting financial institution or affiliate, or both, as the case may be, shall be subject to a penalty of five thousand dollars (\$5,000) for each day in which it fails to produce or supply each such document or information.

(c) If any information supplied or document produced under subsection (a) is materially false, the financial institution or affiliate, or both, as the case may be, shall be guilty of an offense and liable to a penalty of Ten Thousand Dollars (\$10,000) for each such false document or information.

Chapter VII. Infractions, Penalties, Remedial Measures

Section 63. Infractions, penalties, remedial measures.

(a) As provided for by rules and regulations promulgated hereunder, and except as otherwise provided for herein the remedial measures and penalties provided for infractions described in this section shall be determined in particular cases by the Commission and shall be imposed subject to the provisions of the Administrative Procedure Act, 6 PNC Chapter 1, unless otherwise provided by law.

(b) If the Commission finds that an administrator or employee of a financial institution, or the financial institution itself acting through any authorized person, has: violated the provisions of this Act, any rule, regulation, or order issued by the Commission, or any other law applicable to financial institutions; refused to comply with the provisions of this Act, any rule, regulation, or order issued by the Commission, or any other law applicable to financial institutions; willfully neglected to perform his or her duties, or committed a breach of trust or of fiduciary duty; committed any fraudulent or

questionable practice in the conduct of the financial institution's business that endangers the financial institution's reputation or threatens its solvency; refused to submit to examination; conducted business in an unsafe or unauthorized manner; or violated any conditions of its license or any agreement with the Commission, the Commission shall give notice in writing to such financial institution and any offending administrator or employee, stating the particular violations or practices complained of, and the Commission shall call a meeting of the directors of said financial institution and lay before them such findings and demand a discontinuance of such violations and practices as have been found, and may take the following actions:

- (1) issue written warnings;
- (2) conclude a written agreement with the bank providing for a program of remedial action;
- (3) issue an order to cease and desist from such violations and practices if the Commission finds it is necessary and in the best interests of the financial institution involved and its depositors, creditors, and stockholders;
- (4) impose fines on the financial institution or corporation, or on its administrators or principal shareholders in an amount of up to ten thousand dollars (\$10,000) per day for each day that the violation continues; provided, however, that fines shall be of similar amount for comparable financial institutions or corporations, with comparable total assets for the same type of violation;
- (5) suspend temporarily or dismiss administrators from positions in a financial institution or corporation;
- (6) impose restrictions on the operations of the financial institution or corporation;
- (7) revoke the license of the financial institution or corporation;
- (8) order the financial institution or corporation dissolved; or
- (9) revoke the license of a Palau financial institution or the Palau branch of a foreign financial institution and appoint a receiver for the financial institution under this Act.

(c) Except where otherwise specifically provided in this Act, the classes of violations of this Act and the penalties and remedial measures, which attach thereto, and the procedures pertaining to the issuance and imposition of same shall be set forth in rules and regulations adopted by the Commission and shall not be subject to appeal under the Administrative Procedure Act, 6 PNC Chapter 1. With respect to a cease and desist order issued pursuant to subsection (b) the procedure shall be as set forth in the remainder of this subsection. At the directors' meeting provided for in subsection (b), or within thirty calendar days thereafter, the Commission shall serve on the financial institution, its directors and any offending administrators or employees, a written order to cease and



desist from the violations and practices enumerated therein and to take such affirmative action as may be necessary to correct the conditions resulting from such violations or practices. Said order to cease and desist shall be effective upon issuance if the Commission finds that immediate and irreparable harm is threatened to the financial institution or its depositors, creditors, or stockholders; otherwise, said order to cease and desist shall state the effective date, being not less than ten calendar days after delivery or mailing of the notice thereof. A copy of said order to cease and desist shall be entered upon the minutes of the directors of the financial institution, who shall thereafter certify to the Commission in writing that each has read and understood the order to cease and desist. All copies of notices, correspondence or other records of the Commission relating to an order to cease and desist shall be confidential and shall not be publicized or revealed to the public except in any lawsuit authorized by this Act or by other lawful order or authority. The Administrative Procedure Act shall not apply to orders to cease and desist issued hereunder.

(d) For Palau banks whose capital is determined by the Commission to be less than the required minimum capital, in addition to the measures described in subsection (b), the Commission may require the bank to adopt a capital restoration plan satisfactory to the Commission that provides for the bank to attain capital adequacy within a specified time-frame as may be acceptable to the Commission.

(e) (1) The penalties described in subsection (b) may be applied to any person who violates any of the provisions of section 3.

(2) The Commission shall also, notwithstanding any other provision of law, be authorized to liquidate the business of such person under Chapter IX of this Act if it finds the financial institution to be insolvent.

(f) It shall be a criminal offense punishable by a fine of not less than one thousand dollars (\$1,000) nor more than double the amount of credit sought or imprisonment of not less than one year nor more than ten years, or both, for a person to willfully make a misstatement of material fact or fail to state a fact material to an application for credit.

(g) The measures and penalties provided in this section shall not preclude application of other civil penalties or criminal penalties as provided by other laws of the Republic of Palau.

(h) Any fines imposed in accordance with subsection (b)(4) or proceeds in accordance with subsection (d)(2) shall be paid to the National Treasury.

(i) No civil or criminal liability or professional sanctions may be imposed against the bank or its directors, officers, employees, agents, or attorneys who used due diligence for good faith compliance with the requirements of this Act.

Section 79. Regulatory and supervisory powers of the Commission.

(a) The Commission shall be empowered to issue such regulations, orders, or guidance, to visit such offices of financial institutions, and to examine such accounts, books, documents and other records as the Commission shall deem necessary or advisable to give effect to the provisions of this Act.

**Palau National Code (PNC) GENERAL PROVISIONS TITLE 17**

**CRIMES**

**Chapter 1**

**General Provisions**

§ 101. Classification of crimes.

A felony is a crime or offense which may be punishable by imprisonment for a period of more than one year. Every other crime is a misdemeanor.

§ 102. Aiding and Abetting.

Every person is punishable as a principal who commits an offense against the Republic or aids, abets, counsels, commands, induces, or procures its commission or who causes an act to be done, which, if directly performed by him, would be an offense against the Republic. No distinction is made between principals in the first and second degrees, and no distinction is made between a principal and what has heretofore been called an accessory before the fact.

§ 103. Accessories.

Every person who, knowing that an offense against the Republic has been committed, receives, relieves, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment, is an accessory after the fact. An accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one-half the maximum fine prescribed for punishment of the principal, or both; or if the principal is punishable by life imprisonment, the accessory shall be imprisoned not more than 10 years.

§ 104. Attempts.

(a) Except as otherwise provided in subsection (b) of this section, every person who shall unlawfully attempt to commit any of the crimes named in this title, or in any other title of this Code, which attempt shall fall short of actual commission of the crime itself, shall be guilty of attempt to commit the said crime, and where no separate provision is made by law for punishment upon conviction of such attempt, a person so convicted shall be punished by imprisonment for a term not exceeding one-half of the maximum term of imprisonment which may lawfully be imposed upon conviction for commission of the offense attempted, or by a fine in an amount not exceeding one-half of the fine which may lawfully be imposed upon conviction for commission of the offense attempted, or by both such fine and imprisonment.

(b) Every person who shall unlawfully attempt to commit murder, which attempt shall fall short of actual commission of the crime itself, shall be guilty of attempted murder, and shall be sentenced as follows:

- (1) for attempted murder in the first degree, imprisonment for a term of 30 years; and
- (2) for attempted murder in the second degree, imprisonment for a term of not less than 30 months nor more than 30 years.