

Palau Legal

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RPPL No. 7-39

AN ACT

To amend RPPL 6-4, the Money Laundering and Proceeds of Crime Act of 2001, and for other related purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIIL ERA KELULAU DO ENACT AS FOLLOWS:

Section 1. Amendment of RPPL 6-4, the Money Laundering and Proceeds of Crime Act of 2001. RPPL 6-4 is hereby amended to read as follows:

“MONEY LAUNDERING AND PROCEEDS OF CRIME ACT

SUBCHAPTER 1. GENERAL PROVISIONS

Section 1.

Section 2.

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)

©) 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)

(b)

©)

(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:

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(f)

(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:

. . . .

(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)

. . . .

(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:

. . . .

(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 the 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;

Ⓢ “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, 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.

(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.

©) 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)

(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.

©) 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 amount becomes known or is reached by the transaction.

(b)

Section 10.

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)

(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 or the Office of the Attorney General 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, cash dealer, or alternative remittance system to produce and deliver the above-described 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.

©) 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 dealer, or alternative remittance system 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 sections 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 and compliance requirements.

(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)

(2)

(3)

(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 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: