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Country Review Report of Palau

Review by Tuvalu and Cyprus of the implementation by Palau of articles 5-14 and 51-59 of the United Nations Convention against Corruption for the review cycle 2016-2021

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I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Palau of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Palau, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Tuvalu and Cyprus, involving, for Tuvalu, Ms. Susana Fineanganofa (Crown Counsel, Office of the Attorney-General) and Mr. Manatu Siose (Head of Internal Audit Office, Ministry of Finance), and, for Cyprus, Ms. Stavriani Andreou (Police Inspector, Nicosia District Criminal Investigation Department, Cyprus Police) and Mr. Christakis Christodoulou (Police Inspector, Economic Crime Investigation Office, Cyprus Police).
6. A country visit, agreed to by the Republic of Palau, was conducted from 15 to 17 October 2019.

III. Executive summary

1. Introduction: overview of the legal and institutional framework of Palau in the context of implementation of the United Nations Convention against Corruption

Palau deposited its instrument of accession on 24 March 2009. The Convention entered into force in Palau on 23 April 2009.

Palau was placed under the administration of the United States of America in 1945 as one of the United Nations trust territories and gained independence on 1 October 1994. Its legal system is influenced by and modelled on that of the United States; international treaties become the law of the land after ratification. The Constitution, which was adopted in 1981, is the supreme law.

The implementation by Palau of chapters III and IV of the Convention was reviewed in the fourth year of the first cycle and the executive summary of that review was issued on 28 January 2015 (CAC/COSP/IRG/I/4/1/Add.6). The country's framework against money-laundering and terrorist financing has been assessed by the Asia/Pacific Group on Money Laundering.

The legislative framework for preventing corruption and recovering assets in Palau includes, notably, the Constitution, the Penal Code, the National Public Service System Act, the Code of Ethics Act, the Open Government Act, the Palau Law on

Business and Business Regulation, the Public Auditor Act, the Special Prosecutors Act, the Money Laundering and Proceeds of Crime Act, the Financial Institutions Act and the Mutual Assistance in Criminal Matters Act.

The key institutions involved in preventing corruption and recovering assets include the Office of the Attorney General, the Office of the Special Prosecutor, the Office of the Public Auditor, the Ethics Commission, the Office of the Ombudsman, the Bureau of Public Safety, the Bureau of the Public Service System, the Financial Intelligence Unit and the Financial Institutions Commission.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

Palau does not have a specific anti-corruption policy. Principles of good governance and anti-corruption are enshrined in the country's 2030 Sustainable Development Agenda, whose implementation is the responsibility of the Inter-Agency Coordination Group, as well as in government policies, including the Public Service System Rules and Regulations.

Departments or ministries can conduct their own evaluation of the legal and administrative measures under their purview; they may be assisted in this task by the Office of the Attorney General.

An executive order of the Vice-President provides for the establishment of an anti-corruption taskforce. However, the taskforce's mandate is unknown and the taskforce has not been established to date.

Palau takes part in initiatives and is a member of organizations that assist in corruption prevention, including the Asia/Pacific Group on Money Laundering, the Pacific Islands Law Officers' Network, the Pacific Islands Forum Secretariat, the Association of Pacific Island Financial Intelligence Units, the Pacific Community, the Pacific Association of Supreme Audit Institutions and the Pacific Transnational Crime Network.

Several bodies in Palau have a corruption prevention mandate and some of these bodies have worked to disseminate knowledge about the prevention of corruption. The Office of the Public Auditor is responsible for detecting and preventing fraud, waste and abuse in the collection and expenditure of public funds. The Public Auditor is required to report allegations of improper or illegal acts disclosed during his or her audits to the Attorney General or the Office of the Special Prosecutor. The Office of the Ombudsman is not currently operational and previously, the Ombudsman served in an advisory capacity only. The Ethics Commission is charged with enforcing the Code of Ethics Act and as such, may initiate or conduct investigations into alleged violations and bring civil actions. The Office of the Special Prosecutor receives complaints, investigates and prosecutes government corruption and misconduct, and disseminates knowledge about the prevention of corruption through an open national public awareness campaign, visiting each of the 16 states of Palau to hold interactive discussions about corruption, ethics and white-collar crime. The Office of the Special Prosecutor has also launched a website in order to promote the transparency of its quarterly reports and its cases, past and present, and to disseminate knowledge of applicable laws.

Generally, the bodies entrusted with preventing corruption have provisions in their enabling legislation that establish their independence: the Public Auditor's independence is established in the Constitution, article XII, section 2, of which states that "the Public Auditor shall be free from any control or influence by any

person or organization”. The Special Prosecutor is afforded the greatest degree of independence that is consistent with the President’s constitutional and statutory accountability for all matters falling within the jurisdiction of the Executive Branch. The President of Palau does not countermand or interfere with the Special Prosecution’s decisions or actions and the Special Prosecutor determines whether and to what extent he or she will inform or consult with the President about the conduct of his or her duties and responsibilities (title 2, sect. 503 (b), of the Palau National Code). The Public Auditor, the Attorney General and the Special Prosecutor are appointed by the President for a set term. The appointment of the Public Auditor is subject to confirmation by the Palau National Congress and the appointment of the Special Prosecutor is subject to confirmation by the Senate. The three members of the Ethics Commission are appointed by the President on the advice of the Senate, and the Chairperson of the Commission is elected by the majority vote of the Commission (sect.10 (a) of the Code of Ethics Act). The Director of the Financial Intelligence Unit is appointed by the Governing Board of the Financial Institutions Commission (title 17, sect. 3332, of the Palau National Code). The Unit is an independent agency with its own budget, which is determined by its Director. The Unit comprises an investigator/analyst and the Director, who reports to the Board of the Financial Institutions Commission.

Coordination at the national level takes place through informal processes; ad hoc forms of communication are commonly used. The Working Group on Money-Laundering has been used for the purpose of sharing information on money-laundering, in order to avoid duplication.

Palau was reminded to communicate the names and addresses of the authorities that may assist other States parties in developing and implementing anti-corruption measures to the Secretary-General of the United Nations.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The public service system is bound by the National Public Service System Act (title 33 of the Palau National Code) and the Public Service System Rules and Regulations. Merit principles are provided for in title 33, section 202, of the Palau National Code. Detailed provisions have been established regarding recruitment and hiring (parts 3, 4 and 5 of the Public Service System Rules and Regulations), remuneration (title 33, sects. 407–409, of the Code; parts 16 and 17 of the Public Service System Rules and Regulations), training (part 7 of the Public Service System Rules and Regulations), promotion (part 4.3 of the Public Service System Rules and Regulations) and retirement (Pension Plan and Retirement Fund Act of 1987).

Title 33, section 202, of the Palau National Code sets forth guidelines for impartial hiring, which include merit principles such as equal opportunity for all regardless of sex, race, religion, political affiliation or place of origin, non-discrimination based on physical handicap, impartial selection of the ablest person and just opportunities for competent employees to be promoted. There are several exceptions, including cases in which “the service to be performed is special or unique and non-permanent, is essential to the public interest and that, because of the degree of expertise or special knowledge required and the nature of the services to be performed, it would not be practical to obtain personnel to perform such service through normal public service recruitment procedures”. The reviewers were informed that there has been an abuse of this exemption in the past; the reviewers therefore recommended that the exemptions to impartial hiring provided for in title 33, section 202, of the Code be subject to legislative restrictions.

Some training programmes, including induction programmes, cover the Public Service System Rules and Regulations, the Code of Conduct and corruption

prevention bodies, including the Office of the Special Prosecutor, the Office of the Public Auditor and the Ethics Commission. The recruitment of officials into the National Public Service of Palau is conditional upon the applicant undergoing a thorough examination and/or evaluation conducted by the Director of the Public Service System, as provided under part 3.1 of the Public Service System Rules and Regulations in order for the applicant to be eligible to be selected (part 4.1 of the Public Service System Rules and Regulations, in conjunction with title 33, sect. 402, of the Palau National Code). Vacancies and examinations for recruitment are announced and posted in appropriate places and are given the widest publicity justified for the vacancy. One salary schedule for all national government employees (with the exception of those specifically exempted under title 33, sect. 205 (a), of the Palau National Code) is mandated (title 33, sect. 407, of the Palau National Code). Employees are also governed by the Code of Ethics, which regulates transactions by national and State public employees, officials and elected officials, as well as persons making campaign contributions. The law prohibits conflicts of interest, solicitation of gifts and personal gain through governmental transactions, restricts incompatible outside employment and severely restricts the size of campaign contributions while also limiting such contributions to citizens of Palau. In addition, there is a regular rotation policy in the Division of Customs, which is the only department to have this.

The Constitution establishes criteria for the eligibility of a candidate for the offices of the President and Vice-President and for the Palau National Congress. Article VIII, section 3, of the Constitution provides that any citizen of Palau who is not a citizen of another country, is not less than 35 years of age and has been a resident of Palau for the five years immediately preceding the election is eligible to hold the office of President or Vice-President. Article IX, section 6, of the Constitution states that to be eligible to hold office in the Palau National Congress, the candidate must be a citizen of Palau, not be less than 25 years of age, be a resident of Palau for not less than five years immediately preceding the election and be a resident of the district in which the candidate wishes to run for office for not less than one year immediately preceding the election. Although the Constitution (art. VIII, sect. 9) allows for the President and Vice-President to be impeached and removed from office for treason, bribery or other serious crimes, there are no criteria to prevent persons with a criminal record for specific corruption offences (such as bribery) from being eligible to hold the office of the President or Vice-President or to hold office in the Palau National Congress.

Title 33, section 605 (a), of the Palau National Code provides regulations for candidature for public office, including on financial disclosure.

Palau is a de facto non-partisan democracy and has no political parties. Legislative provisions, therefore, address only candidate funding (title 33, chap. 6, entitled “Code of Ethics Act”, of the Palau National Code). The Act requires candidates to file their campaign statements with the Election Commission (title 33, sect. 606 (a), of the Code), prohibits foreign nationals from directly or indirectly contributing to the funding of a candidate and prohibits contributions by any person in a name other than the name by which the person is identified for legal purposes (thus prohibiting anonymous donations) (title 33, sect. 607 (a) and (c), of the Code), regulates methods of payment (title 33, sect. 607 (d), of the Code), and addresses the maintenance of campaign bank accounts, including the expenditure and solicitation of funds (title 33, sect. 607 (d)–(h), of the Code). The definition of “contribution” in title 33,

section 601 (e), of the Code is limited to payments, forgiveness of a loan, a payment of a loan by a third party or an enforceable promise to make a payment, whenever made, except to the extent that full and adequate consideration is received, unless it is clear from surrounding circumstances that it is not made for political purposes. The definition does not, therefore, include non-monetary contributions such as gifts or other benefits. During the country visit, the Ethics

Commission indicated that, in practice, “contribution” included monetary, non-monetary and in-kind contributions. The Public Auditor is required to audit campaign statements filed by candidates for the offices of President and Vice-President and conducts random audits of other statements (sect. 11 of the Code of Ethics Act). Reports and statements on campaign statements filed, pursuant to the Code of Ethics Act, are public records (title 33, sect. 613, of the Palau National Code).

The Code of Ethics Act and the Public Service System Rules and Regulations outline the standards of conduct for candidates and public officials, including transparency, conflict of interest measures and gifts or other items of monetary value (title 33, sects. 604 and 605, of the Palau National Code), prohibitions of nepotism and of outside employment and other activities (parts 5.7 and 6.1 of the Public Service System Rules and Regulations) and a code of conduct (part 11 of the Public Service System Rules and Regulations). Public officials are required to disclose certain conflicts of interest (title 33, sect. 604, of the Palau National Code). The Code of Ethics Act governs financial disclosure statements to be submitted annually to the Ethics Commission (title 33, sect. 605, of the Palau National Code). The Commission may pursue charges concerning alleged violations, initiate or carry out investigations and hold hearings (title 33, sect. 608 (g), of the Code). The Public Auditor can conduct audits on these financial disclosures if requested by the Ethics Commission, Attorney General or Special Prosecutor (title 33, sect. 609, of the Code). Failure to make a disclosure or an honest disclosure is a misdemeanour. Part 11 of the Public Service System Rules and Regulations provides for disciplinary and other measures. Acts of corruption can be reported by public officials to the Special Prosecutor or Public Auditor.

Palau does not currently require public officials to take a general oath of office. However, some bodies, such as law enforcement, customs, the Office of the Special Prosecutor and the Palau National Congress, do have such a requirement. Some institutions, such as the Office of the Public Auditor and the Bureau of Public Safety, have their own codes of conduct. Employees of those two institutions are obliged to comply with both their own specific codes of conduct, as well as the Code of Ethics Act and the Public Service System Rules and Regulations.

Article X of the Constitution establishes the judiciary. The Chief Justice of the Palau Supreme Court is appointed by the President, acting on the advice of the Judicial Nominating Commission. A justice of the Supreme Court can be removed only for treason, bribery, high crimes or improper practices, or on the grounds of his or her inability to discharge his or her functions of office upon a vote of not less than two thirds of the members of each house of the Palau National Congress (art. X, sect. 10, of the Constitution). The Code of Judicial Conduct and the Model Code of Judicial Conduct promulgated by the American Bar Association outline the code of judicial conduct applicable to judges and justices.

The code of ethics for law practitioners, including the judiciary and the prosecution service, are outlined in the Model Code of Judicial Conduct and Rules of Professional Conduct of the American Bar Association. The Office of the Attorney General also developed its own office manual in 2014.

Public procurement and management of public finances (art. 9)

Palau has a decentralized procurement system. The Palau Statutory Framework for National Government Procurement (title 40, chap. 6, of the Palau National Code) governs the public procurement process. No law prevents price fixing in public tenders, and only sole source procurement with a value of \$20,000 or less is regulated (title 40, sect. 627, of the Code). The Palau National Code provides legal recourse and remedies for procurement procedures (title 40, sects. 649 and 650), including an appeal process, and measures for resolving contractual disputes (title 40, sect. 651). The Code also has provisions against realizing personal gains,

including kickbacks and gratuities, through public employment (title 40, sects. 653–660). Employees are required to comply with conflict of interest provisions that may require disclosures, screenings and/or temporary restrictions on future employment. Title 40, section 661, imposes civil penalties for violations of the rules governing the public procurement process by employees or contractors. There are currently no criminal penalties for violations of the Procurement Code and there is no form of blacklisting.

The tender process is used for purchases with a value of over \$20,000. The Government has three procurement officers: the Director of Public Services; the Director of Public Works; and the Chief of the Property and Supply Division. Under title 40 of the Palau National Code, there are eight types of procurement procedures, each with their own provisions. State governors may act as procurement officers for amounts below \$20,000, allowing them to decide on procurement matters below this threshold and bypass the Foreign Investment Board. Invitations for bids must include certain information, including notice, information for placing bids, purchase descriptions and performance requirements (title 40, sect. 615, of the Code). Title 40, section 616, of the Code provides requirements regarding public notice of the invitation for bids, which includes direct mailing, publication in a newspaper, posting at certain government offices and buildings, and broadcast on radio and television, as well as on government websites. There is currently no e-procurement system; however the Ministry of Finance has made it possible to use an electronic notice. Title 40, section 621, of the Code indicates that bids are to be evaluated on the basis of the requirements set forth in the invitation for bids.

The Budget Reform Act (title 40, chap. 3, of the Palau National Code) establishes requirements and procedures for the annual budget. The President proposes the budget to the Palau National Congress, that budget including a funds availability analysis, the President's budget report on the last fiscal year and data to explain and justify the proposed budget. The President must submit an authorization and appropriation bill and annual budget documentation to the Palau National Congress by 15 April each year. Reports on revenue and expenditure are published online by the Bureau of Budget and Planning (Office of Planning and Statistics). The Public Auditor is required to transmit an annual report and audit on the previous fiscal year by 30 June each year.

Palau has a financial management system that governs public funds, which includes policies and procedures for the collection and expenditure of public funds. This system contains internal safeguards such as the certification of funds, and the Public Auditor has special duties to prevent and detect fraud, waste and abuse (title 40, sect. 224, of the Palau National Code). A coordinating group was established to review the Public Auditor's audit reports and make recommendations to the President and the Palau National Congress. Every year, the Public Auditor contracts out a whole-of-government financial audit to an independent external auditing firm.

Government records are preserved by government departments or by a specific person for at least five years (title 19, sect. 405, of the Palau National Code). After that time or upon agreement, the National Archives maintains these records, pursuant to title 19 of the Code. The Code criminalizes the damaging or destruction of public records (title 19, sect. 418, of the Code) and forgery (title 17, sects. 2802–2804, of the Code).

Public reporting; participation of society (arts. 10 and 13)

The Administrative Procedure Act and the Open Government Act address public access to information. The Administrative Procedure Act provides for public access to information and competent decision-making authorities for the rule-making, adjudication and licencing performed by government agencies. Agency

rules and rulings, which are published by the Director of Domestic Affairs (title 6, sect. 128, of the Palau National Code), are not effective until they are available for public inspection (title 6, sect. 123, of the Code).

The Open Government Act gives citizens the right to request official government information, but the request-making procedure is unclear. The Attorney General acts as the default designated authority. Reasons for withholding information include information that (a) is classified as secret in the interest of national defence or foreign policy (title 1, sect. 905 (a), of the Palau National Code); (b) is a trade secret or privileged or confidential commercial or financial information (title 1, sect. 905 (d), of the Code); and (c) would constitute an “unwarranted invasion of personal privacy” (title 1, sect. 905 (f), of the Code), it being understood that there is a presumption against non-disclosure. High-level government documents are considered strictly confidential and a security clearance or an Open Government Act request is required to access them. The timeline is outlined in the Act (namely, a decision within 10 working days unless there is an exceptional circumstance, or because of the volume of information requested (title 1, sect. 906 (a), of the Code). Procedures are yet to be developed to ensure compliance with the 10-day requirement. Penalties are provided for in title 1, section 907, which also outlines that action against a governing body can be brought before the Palau Supreme Court to enforce a violation of the Open Government Act. Title 1, sect. 902, of the Code refers to meetings of governing bodies being open and public, permitting persons to attend unless provided for otherwise. Although they are not obliged to, some government departments, including the Office of the Special Prosecutor and the Office of the Public Auditor, actively facilitate public access by publishing information on their functions on their websites, through media campaigns and in newspapers. A facility is also currently being built that will simplify administrative procedures for the public by acting as a “one-stop shop” for members of the public seeking to access competent decision-making authorities.

Palau has engaged in outreach activities, such as those carried out by the Office of the Special Prosecutor in the 16 states of Palau, activities held on International Anti-Corruption Day, radio awareness-raising programmes and the incorporation of anti-corruption information into social science classes in public high schools. Anonymous reporting to the Public Auditor and the Office of the Special Prosecutor is permitted. The Office’s open national public awareness campaign includes discussions on white-collar crime, ethics and how to define corruption, as well as ways to make complaints to the Office itself or to the Office of the Attorney General. The Office of the Special Prosecutor has also launched a website to provide access to its quarterly reports and past and present cases. In addition, the Public Auditor publishes audit reports, starting from 2010, on its website. However, neither the Public Auditor nor the Office of the Special Prosecutor periodically report on corruption risks.

Private sector (art. 12)

Title 12 of the Palau National Code, entitled “Business Associations”, requires all corporations, whether profit or non-profit, stock or non-stock, to maintain certain records (sect. 124). A general provision on the records of transactions applies to every person, firm, corporation or association in relation to a tax, fee or charge (title 40, sect. 1601, of the Code). The Register of Corporations is part of the Office of the Attorney General. The Chamber of Commerce has a code of conduct and if one of the board members is running for Senate or Congress, there is a cooling-off period; however, there are no requirements relating to the integrity of board members. In order for the articles of incorporation of a corporation to be approved, the identity of incorporators, directors and proposed officers must be provided (title 12, sect. 103 (a) of the Code). Title 40 of the Code contains provisions on business licences, including penalties for violations (sects. 1501–1505). Business licences can also be revoked (sect. 1703) and a general penalty provision applied (sect.

1704). Foreign investments are covered by the Foreign Investment Act and title 28 of the Palau National Code and are the responsibility of the Foreign Investment Board. There is currently no formal process in place in relation to conflicts of interest, other than restrictions on the employment of present and future government employees who have participated in government procurement processes or worked at the Bureau of Revenue, Customs and Taxation (title 40, sects. 658 and 1804, of the Code).¹ Regarding cooperation between law enforcement authorities and the private sector, Palau has enacted the Open Government Act, and the Bureau of Public Safety has established the Police Practices Committee. In addition, title 12 of the Palau National Code requires all corporations, whether profit or non-profit, stock or non-stock, to cooperate with requests for the production of books of accounts and related records made by the Registrar of Corporations (sect. 124). The President may appoint officers to audit and report on the accounts of corporations authorized to do business in Palau (sect. 104).

The recording of non-existent expenditure, the entry of liabilities with incorrect identification of their objects, the use of false documentation and the intentional destruction of bookkeeping documents are prohibited under title 17, section 2903, of the Palau National Code, on falsifying business records, if the acts are committed with the intent to defraud, while forgery is covered in title 17, sections 2802–2804 of the Code.

Palau does not expressly disallow the tax deductibility of expenses that constitute bribes.

Measures to prevent money-laundering (art. 14)

The Money Laundering and Proceeds of Crime Act (title 17, chap. 33, of the Palau National Code), Financial Institutions Act (title 26, chap. 10, of the Code) and relevant Financial Intelligence Unit regulations require reporting entities such as financial institutions (except credit unions), money or value transfer services and certain high-risk designated non-financial businesses and professions to have policies, controls and procedures to manage and mitigate risks related to money-laundering and terrorist financing,² identify and verify the identity of customers and beneficial owners (customer due diligence), report suspicious and cash transactions (with a value equal to or above \$10,000) to the Financial Intelligence Unit (suspicious transaction reports and cash transaction reports) and retain related records for at least five years. The Financial Institutions Commission and the Financial Intelligence Unit may impose sanctions for failure to comply with these requirements (title 17, sect. 3329, and title 26, sect. 1091, of the Code).

Pursuant to the Money Laundering and Proceeds of Crime Act, the Financial Institutions Commission and the Financial Intelligence Unit are the supervisory and regulatory bodies for banks and money or value transfer services. The Financial Intelligence Unit is empowered to regulate certain categories of designated non-financial businesses and professions, but no supervisory body exists. The Unit has issued a regulation on money-laundering and terrorist financing for financial institutions, but no similar regulation is available for designated non-financial businesses and professions.

¹ After the country visit, the national authorities indicated that the entity no longer existed in this form, but that it had been replaced by the Bureau of Revenue and Taxation and the Bureau of Customs and Border Protection.

² After the country visit, the national authorities indicated that the Financial Intelligence Unit regulations for designated non-financial businesses and professions containing these requirements were in the process of being adopted at the time that the current document was being finalized.

The Money Laundering and Proceeds of Crime Act established the Financial Intelligence Unit as an independent agency responsible for receiving, analysing, investigating and disseminating information concerning suspected proceeds of crime and terrorist property (title 17, sect. 3331, of the Palau National Code). Title 17, section 3334, of the Code sets out the Unit's powers, duties and obligations in more detail and establishes its right to cooperate and share information with domestic and foreign competent authorities.

Domestic cooperation and coordination are carried out through the Working Group on Money-Laundering. The Working Group's functions encompass both policymaking and operational coordination. It is chaired by the Financial Institutions Commission and its membership includes the Office of the Attorney General, the Financial Intelligence Unit, the Bureau of Public Safety and the Division of Customs in the Bureau of Revenue, Tax, and Customs. The first national risk assessment of risks related to money-laundering and terrorist financing was finalized by the Working Group in November 2017.

There is a standing taskforce, the Financial Crime Investigation Unit, which is mandated to coordinate the efforts of various law enforcement agencies in combating money-laundering.

At the international level, the Financial Intelligence Unit is empowered to cooperate and exchange information with foreign counterparts without an agreement, although it may enter into such agreements if required by other jurisdictions.

Under title 17 of the Palau National Code, any person who physically transports cash or negotiable instruments in an aggregate amount of \$10,000 or more (or its equivalent) across borders, or who attempts to do so, must submit a written declaration to the Division of Customs, with a copy to the Financial Intelligence Unit (sect. 3603). Failure to do so, or the submission of a declaration with an omission or misstatement, may result in an administrative penalty of 5 per cent of the total amount transported, in addition to criminal or civil penalties (sect. 3607).

Financial institutions and designated non-financial businesses and professions whose activities include wire transfers are required to obtain, verify, maintain, manage and transmit such information as prescribed by regulations promulgated by the Financial Intelligence Unit. If financial institutions and designated non-financial businesses and professions whose activities include wire transfers receive a wire transfer that does not contain all the required originator information, they must take reasonable measures to obtain the missing information from the ordering institution or beneficiary and verify that information. If the information cannot be obtained, the transfer must be refused and a suspicious transaction report filed with the Financial Intelligence Unit (title 17, sect. 3318 of the Palau National Code).

Palau is committed to implementing the Financial Action Task Force Recommendations and is a member of the Asia/Pacific Group on Money Laundering. To date, the Financial Intelligence Unit has signed six memorandums of understanding with foreign jurisdictions and organizations in Asia and the Pacific. The Unit is not yet a member of the Egmont Group of Financial Intelligence Units. Palau was assessed for compliance with the Financial Action Task Force Recommendations in 2018 and is taking steps to address the related recommendations.

2.2. Successes and good practices

- There is a regular rotation policy in the Division of Customs (art. 7, para. 1).

- Title 33, section 613, of the Palau National Code, on public records; every report and statement filed is a public record open for inspection (art. 7, para. 3).
- There is an incentive awards programme for public officials (art. 8, para. 1).
- Corruption can be reported in numerous ways and to different government departments. The Office of the Special Prosecutor was commended for developing a user-friendly, confidential process that allows anonymous reporting online.

2.3. Challenges in implementation

It is recommended that Palau:

- Develop and implement effective, coordinated anti-corruption policies in line with paragraph 1 of article 5 of the Convention, and allocate adequate resources to ensure their effective implementation (art. 5, para. 1).
- Endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy in preventing and fighting corruption (art. 5, para. 3).
- Establish the anti-corruption taskforce as provided for in the Executive Order, in line with paragraph 1 of article 6 of the Convention, and allocate adequate resources to ensure its effective functioning (art. 6, paras. 1 and 2).
- Re-establish the Office of the Ombudsman and ensure the availability of necessary material resources and specialized staff, as well as training for staff to carry out their functions (art.6, para. 2); establish legislation that restricts the exemptions to impartial hiring provided for in title 33, section 202, of the Palau National Code (art. 7, para. 1).
- Consider strengthening existing legislative and administrative measures to prescribe criteria concerning candidature for and election to public office (art. 7, para. 2).
- Consider expanding the definition of “contribution” to include monetary, non-monetary and in-kind contributions (art. 7, para. 3).
- Endeavour to review and strengthen the Code of Conduct to further the correct, honourable and proper performance of public functions, taking into account international standards and initiatives (art. 8, para. 3).
- Endeavour to strengthen measures and systems requiring public officials to make declarations to appropriate authorities regarding their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may arise (art. 8, para. 5).
- Revise the procurement legislation to (a) address price-fixing and strengthen the competitive process, including at the State level; and (b) strengthen the legal recourse and remedies for addressing disputes over adherence to applicable rules and procedures (art. 9, para. 1).
- Consider taking measures to enhance transparency in its public administration by strengthening the Open Government Act and publishing information, which may include periodic reports on the risk of corruption in its public administration (art. 10).
- Enhance existing anti-corruption measures in the private sector, including accounting and auditing standards and cooperation with law enforcement, and establish adequate penalties for non-compliance (art. 12, paras. 1 and 2).

- Take measures regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards (art. 12, para. 3).
- Disallow the tax deductibility of expenses that constitute bribes (art. 12, para. 4).
- Enact necessary regulations for credit unions, money or value transfer services and designated non-financial businesses and professions, outlining their obligations related to money-laundering and terrorist financing in detail, and establish effective supervision over these sectors (art. 14, para. 1).
- Adopt effective and dissuasive sanctions for failure to declare or false declaration of cross-border transportation of cash and negotiable instruments (art. 14, para. 2).
- Endeavour to complete the process for the Financial Intelligence Unit to become a member of the Egmont Group (art. 14, para. 5).

2.4. Technical assistance needs identified to improve implementation of the Convention

- Assistance in drafting the National Anti-Corruption Strategy, and institution-building of relevant institutions tasked with preventing and combating corruption, including the Office of the Special Prosecutor (arts. 5 and 6).
- Legislative support and support in defining the scope and functions of the Ombudsman, and capacity-building and training for the Ethics Commission (arts. 6 and 8).
- Technical support to review and update the existing conflict of interest statements, awareness-raising in this area and support for the private sector (art. 7).
- Digitalization of the National Archives (art. 9).
- Awareness-raising for public officials and the public, including the media, on corruption (art. 10).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

Palau relies on the Mutual Assistance in Criminal Matters Act (title 18, chap. 13, of the Palau National Code) and the provisions of bilateral and multilateral treaties and arrangements to provide international cooperation in relation to asset recovery.

Palau has entered into several bilateral and multilateral agreements on mutual legal assistance and on direct cooperation with law enforcement agencies of foreign jurisdictions in order to facilitate international cooperation in the area of asset recovery.

Palau has received a limited number of both formal and informal requests for mutual legal assistance, which is commensurate with its size and context, and has responded positively to all of them. There has been only one informal request, which concerned tracing of the proceeds of corruption. Title 17, sects. 3334 and 3335, of the Palau National Code allow the Financial Intelligence Unit to disclose any report or information, including on corruption proceeds, to foreign counterparts with or without conditions attached. Similarly, the Office of the

Special Prosecutor may share information with or without conditions attached. Information can be shared spontaneously and informally, but in cases regarding specific targeted information, official requests are made. Palau may also exchange information using the Asset Recovery Interagency Network – Asia Pacific and the International Criminal Police Organization (INTERPOL) through United States authorities.

Prevention and detection of transfers of proceeds and crime; financial intelligence unit (arts. 52 and 58)

The Money Laundering and Proceeds of Crime Act (title 17, chap. 33, of the Palau National Code) requires financial institutions to apply enhanced due diligence measures to high-risk customers, including if the customer or the beneficial owner of the customer, their family member or close associate is a domestic or foreign politically exposed person (title 17, sects. 3312 and 3313 of the Code), and to keep relevant records for at least five years following the completion of the transaction or end of the business relationship. However, there are challenges regarding the compliance of financial institutions with these requirements. It was therefore recommended that Palau ensure that all financial institutions comply with the record-keeping requirements in the case of enhanced due diligence.

Under the Financial Intelligence Unit regulations for financial institutions, banks, foreign bank branches and credit institutions must take reasonable steps to identify the beneficial owners of a customer only if the customer is a legal person or arrangement. There is no requirement for companies in Palau to maintain beneficial owner information other than in respect of the legal owner of shares.

Palau has not issued specific advisories to financial institutions on when or how to apply enhanced due diligence, appropriate account-opening, maintenance, record-keeping and ongoing monitoring measures. However, a mechanism exists for the Financial Institutions Commission to notify financial institutions and require immediate action following a relevant warning or advisory from competent authorities in the United States. Furthermore, the Financial Intelligence Unit may instruct reporting entities to take appropriate steps in relation to any information or report received by the Unit in order to enforce compliance with the Money Laundering and Proceeds of Crime Act or to facilitate any investigation anticipated by the Unit or a law enforcement agency (title 17, sect. 3334 (j), of the Palau National Code).

The establishment of banks that have no physical presence in Palau and that are not affiliated with a regulated financial group subject to effective consolidated supervision (“shell banks”) is prohibited. In addition, the country’s financial institutions and designated non-financial businesses and professions are prohibited from entering into or continuing business relations with (a) banks in jurisdictions in which they have no physical presence and that are not affiliated with a regulated financial group subject to effective consolidated supervision; or (b) a financial business in a foreign country that permits its accounts to be used by banks that are registered in jurisdictions where have no physical presence and are not affiliated with a regulated financial group subject to effective consolidated supervision (title 17, sect. 3317, of the Palau National Code).

Pursuant to title 17, sections 3334 and 3335, of the Palau National Code, the Financial Intelligence Unit is responsible for, inter alia, receiving, gathering, analysing and sharing information about suspected proceeds of crime and terrorist property, both domestically and internationally.

Under title 33 of the Palau National Code, the public officials specified in section 601 (o) must submit to the Ethics Commission and verify, under penalty of perjury, public statements of their financial interests and the financial interests of their family members, such as income, debts, owned business entities, real or

personal property, and directorship or officership in a business (sect. 605). There are no reporting requirements in relation to foreign accounts.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

The legislation of Palau treats other States as legal persons for the purpose of bringing civil action in local courts. Title 17, sections 656 and 718, of the Palau National Code give domestic courts the power to order restitutions to victims for reasonable and verified losses as a result of offences. However, foreign States do not fall under the definition of a “victim” for these purposes. Title 17, section 705 (b) (2), of the Code recognizes the rights of legitimate property owners in confiscation proceedings, but there are no examples of foreign States pursuing claims for ownership in such proceedings.

There is an enforcement mechanism for foreign restraint and confiscation orders relating to the proceeds of a serious offence (title 18, sect. 1320, of the Palau National Code). Upon receipt of a request for enforcement of a foreign order, the Attorney General may apply to the Supreme Court to enter and enforce the order as if it were a domestic order. The detailed procedure for the enforcement of domestic restraint and confiscation orders is provided for in title 17, chapter 7, of the Code. A serious offence is defined as any offence which, had it occurred in Palau, would have constituted a criminal offence punishable by a term of imprisonment of more than one year (title 18, sect. 1302 (P) of the Palau National Code). All offences established under the Convention carry terms of imprisonment of more than one year.

Palau can adjudicate money laundering offences upon a foreign request, and it can confiscate related proceeds (i.e. property forming the subject of the offence), including income and other benefits obtained therefrom (title 17, sect. 3848, of the Palau National Code). Foreign confiscation orders made in the absence of a conviction as a result of the death or flight of the defendant may be enforced (title 18, sect. 1320 (c) (2), of the Code).

The Attorney General may apply to the Supreme Court to obtain a restraint order upon foreign request where criminal proceedings have begun in the foreign State in respect of a serious offence and there is probable cause to believe that the property is located in Palau. In case of foreign requests for assistance in locating proceeds of a serious offence, the Attorney General may authorize any application of the Money Laundering and Proceeds of Crime Act (title 18, sect. 1321 of the Palau National Code). It is not possible to take proactive measures to preserve property in anticipation of a foreign freezing or confiscation order.

Requirements regarding the contents and manner of transmission of foreign requests for mutual legal assistance are set out in title 18, sections 1311 and 1314, of the Palau National Code. Requests for mutual legal assistance may be granted, after consultation if necessary, even if the request does not comply with these requirements. In practice, the Attorney General will informally liaise with the requesting State beforehand and make every effort to ensure that a complete request is submitted. There are no de minimis thresholds, but title 18, section 1311, of the Code does stipulate that any request for legal assistance must relate to a “serious offence” in order for it to be entertained. It is, furthermore, always the practice to consult with a requesting State before any provisional measures are lifted.

The rights of bona fide third parties are protected during confiscation proceedings (title 17, sect. 705 (b), of the Palau National Code).

Palau has furnished the relevant laws in the course of the review process.

Palau does not require the existence of a relevant treaty in order to provide assistance to other States in confiscation proceedings.

Return and disposal of assets (art. 57)

Confiscated property is required to be placed in the Forfeited Property Fund within the National Treasury and transferred to the Attorney General. The Attorney General will decide on the final disposition of such property in accordance with the requirements of title 17, section 717, of the Palau National Code, or as authorized by any other law.

The Mutual Assistance in Criminal Matters Act expressly provides for the sharing of confiscated property with foreign States. If property was realized in Palau as a result of action taken in the country upon request from a foreign State, the Attorney General may enter into an arrangement with that State for the reciprocal sharing of part of such property (title 18, sect. 1322, of the Palau National Code). This provision has not been tested in practice and there is no clarity on how the Attorney General would exercise this discretion with respect to the specific obligations described under article 57, paragraph 3, of the Convention. It was therefore recommended that Palau ensure that the Mutual Assistance in Criminal Matters Act clearly provide for the return of confiscated property in accordance with article 57, paragraphs 2 and 3.

Before the Attorney General grants a request for mutual legal assistance, the requesting foreign State must provide sufficient written assurance that they will cover all costs associated with the request (title 18, sect. 1311, of the Palau National Code).

If necessary, Palau will consider entering into agreements or arrangements with other States, on a case-by-case basis, for the final disposal of confiscated property.

3.2. Challenges in implementation

It is recommended that Palau:

- Adopt necessary legislative and administrative measures to (a) require all financial institutions to identify beneficial owners of funds deposited into high-value accounts and to provide a definition of such accounts; and (b) require financial institutions to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of legal persons that are close associates of politically exposed persons (art. 52, para. 1).
- Issue specific advisories to financial institutions on when and how to apply enhanced due diligence and appropriate account-opening, maintenance, record-keeping and ongoing monitoring measures (art. 52, para. 2 (a)).
- Take appropriate measures to notify financial institutions of the identity of particular legal or natural persons to whose accounts such institutions are expected to apply enhanced security and, in particular, extend the existing system so that it applies when relevant warnings or advisories are received from any State party; and ensure that financial institutions comply with relevant record-keeping requirements in the case of enhanced due diligence (art. 52, para. 3).
- Consider introducing reporting and record-keeping requirements for appropriate public officials in relation to foreign accounts that they have an interest in or signature or other authority over (art. 52, para. 6).
- Adopt necessary legislative measures in order to clarify that other States parties have locus standi to (a) initiate civil action in the country's courts; and

(b) claim, in confiscation procedures, ownership over assets acquired through the commission of a Convention offence (art. 53 (a) and (c)).

- Amend the rules on the admissibility of civil action in order to give full effect to the rights of other States parties to reclaim property or seek compensation or damages (art. 53 (b)).
- Consider taking additional measures to preserve property for confiscation, such as a foreign arrest or criminal charge related to the acquisition of such property (art. 54, para. 2 (c)).
- Ensure that the Attorney General exercises his or her discretion under title 18, section 1320, of the Palau National Code to observe the binding obligations under article 55, paragraphs 1 and 2, of the Convention.
- Endeavour to join INTERPOL and relevant asset recovery networks in order to proactively share information on the proceeds of corruption (art. 56).
- Adopt measures for the return and disposal of confiscated assets according to article 57, paragraphs 1 to 3, of the Convention, taking into account the rights of bona fide third parties (art. 57, paras. 1 to 3); and ensure that confiscated property is returned to the requesting State party in accordance with article 57, paragraph 3, of the Convention, including in cases in which the Mutual Assistance in Criminal Matters Act would allow otherwise (art. 57, paras. 3 and 5).
- Ensure that only reasonable costs are deducted when returning or disposing of property (art. 57, para. 4).
- Consider concluding more bilateral and multilateral agreements on asset recovery, including with countries from outside the region (art. 59).

3.4. Technical assistance needs identified to improve implementation of the Convention

- Capacity-building: on-site expert assistance and training (arts. 53 to 55 and 57).
- Facilitation of inter-agency and international cooperation (art. 51).

IV. Implementation of the Convention

A. Ratification of the Convention

The Republic of Palau deposited its instrument of accession to the United Nations Convention against Corruption (UNCAC) with the Secretary-General on 24 March 2009 (C.N.184.2009.TREATIES-6), pursuant to the Joint Senate Resolution 8-7 that was adopted on 20 February 2009. The Convention entered into force in Palau on 23 April 2009.

B. Legal system of Palau

The Republic of Palau has a democratic system of Government. Placed under United States administration after WWII as one of the districts of the Trust Territory of the Pacific Islands, Palau became independent on 1 October 1994. Its democracy is therefore influenced by and modeled after the American system of Government, and English is one of the country's official languages.

Palau adopted its Constitution in 1981. The Constitution provides for the separation of powers into three

branches of Government: the Executive, Legislature and Judiciary.

Executive Branch: The Executive Power is vested in the President, who acts as the Chief Executive of the National Government. The Cabinet consists of the Ministers who are appointed by the President with the advice and consent of the Senate and who serve at the will of the President. The Vice President serves as one of the Ministers of the National Government without requiring the advice and consent of the Senate; in the current administration, the Vice President serves as the Minister of Justice. The President and Vice President are elected in a nationwide election. Each may be removed from Office for treason, bribery or other serious crimes and by a vote of not less than two-thirds (2/3) of the members of each House of the Olbiil Era Kelulau (OEK). They may also be removed from Office by a recall election, initiated at the request of a supermajority of State legislators. The President appoints the Attorney General, also without requiring the advice and consent of the Senate. The Office of the Attorney General falls under the Ministry of Justice.

Legislative Branch: The legislative power resides in a bicameral legislature known as the OEK, composed of a Lower House -- the House of Delegates, and an Upper House -- the Senate. Members of both Houses are elected to terms of four years. The House of Delegates is comprised of one Delegate popularly elected from each of the 16 States of Palau while a total of the 13 Senators are elected at large. The President of the Senate heads the Senate and the Speaker of the House heads the House of Delegates. To become law, legislation must receive a majority vote in both Houses and be approved by the President.

Judicial Branch: The judicial power of Palau is vested in a unified judiciary, consisting of the Supreme Court, Appellate Court, Land Court and Court of Common Pleas. The Chief Justice is the administrative head of the unified judicial system.

The Supreme Court is a Court of Record consisting of an appellate division and a trial division. The Supreme Court is composed of a Chief Justice and at least three Associate Justices, all of whom are members of both divisions. All appeals are heard by at least three Justices. Matters before the trial division may be heard by one Justice. No Justice may hear or decide an appeal of a matter heard by him in the trial division. The appellate division of the Supreme Court has jurisdiction to review all decisions of the trial division and all decisions of lower courts.

All Justices are appointed by the President for life and can only be removed by impeachment for the commission of treason, bribery, other high crimes or improper practices, or on the grounds of his inability to discharge the functions of his Office. Removal of a Justice from Office requires a vote of not less than two-thirds (2/3) of the members of each House of the OEK. Appointment to the bench comes from a list of seven nominees submitted to the President by the Judicial Nominating Commission (JNC), who are required to submit a new list of nominees to the President every year. The JNC consists of seven members: three elected bar members, three citizens appointed by the President who are not members of the Bar and the Chief Justice. The Chief Justice presides as Chairman of the JNC.

By popular vote in the 2008 General Election, Palau established the right to trial by jury; the law took effect on 8 January 2010. Only defendants accused of crimes punishable by a sentence of imprisonment of 12 years or more are entitled to a jury trial, which is mandatory unless waived by the defendant in writing. Qualified jurors must be 21 years or older, have not been convicted of a felony within the past five years, not currently incarcerated, and able to read and understand both the Palauan and English languages. Juries must consist of six members, and a unanimous verdict is required for a defendant to be found guilty.

Special Prosecutor: The Special Prosecutor has broad authority to investigate and prosecute by criminal or civil action all violations of Palauan law, concurrent with the Attorney General. However, the Special Prosecutor is uniquely charged with prosecuting cases that the Office of Attorney General cannot pursue because of conflict of interest or other ethical considerations. The Special Prosecutor is empowered to inspect all National and State Government records and to require the cooperation of Government employees in such inspections and investigations. Palauan law affords the Special Prosecutor the greatest degree of independence in fulfilling his/her mandate and prohibits the President of the Republic to interfere with the Special Prosecution's decisions or actions.

According to the website of the Office of the Special Prosecutor (<https://www.palauosp.org/about-us/>), the Office is an independent office in Palau tasked with receiving complaints, investigating, and prosecuting any and all allegations of violations of the Constitution and laws of the Republic of Palau. The Office operates under

the Special Prosecutors Act, a law of the National Government of the Republic of Palau that is currently codified at Title 2 of the Palau National Code, Chapter Five (cited as 2 PNC § § 501-507).

Public Auditor: The Office of Public Auditor, headed by the Public Auditor, is an independent agency of the Republic. The Office audits and inspects the accounts of the National Government and all its components, State Governments, public legal entities and non-profit organizations that receive public funds from the National Government and/or State Governments.

The Office of the Public Auditor has the responsibility to detect and prevent fraud, waste and abuse in the collection and expenditure of all public funds. The Public Auditor is required to report allegations of improper or illegal acts disclosed by his audits to the Attorney General or the Special Prosecutor for possible legal action. The Office of Public Auditor may directly prosecute criminal actions against the President and Attorney General, as well as civil recovery actions when fraud is involved.

Ethics Commission: Palau's Ethics Commission is charged with enforcing the Republic's Code of Ethics Act. The Act functions as a code of conduct for elected officials and Government employees of the National and State Governments and include prohibitions of specified conflicts of interest. The Act also requires the filing by public officials of annual financial disclosure statements and by candidates for elective office of pre- and post-campaign disclosure statements.

Office of Ombudsman: The Office of the Ombudsman was created by Executive Order of the President of the Republic. The Ombudsman serves in an advisory capacity only; efforts to provide a statutory basis for and to strengthen the Office have been unsuccessful to date. The Ombudsman's main function is to assist individuals with grievances regarding services, programmes or activities of the National Government.

Relevant supporting information used in preparing the self-assessment checklist by Palau included:

- Constitution of the Republic of Palau
- Penal Code of the Republic of Palau 2014-Title 17 PNC
- National Public Service System Act-Title 33 PNCA
- Public Service System Rules and Regulations
- Code of Ethics Act –Title 33 PNC
- Open Government Act 2013
- Palau Law on Business and Business Regulation -11 PNCA Sec.653
- Money Laundering and Proceeds of Crime Act (MLPC) 2001
- Palau Financial Transaction Reporting Act 2009
- Administrative Procedure Act, Title 6 PNC
- Public Auditor Act 1985-Title 40 PNCA Chapter 2
- Special Prosecutors Act - Title 2 of the Palau National Code, Chapter 5
- Budget Reform Act 2001-Title 40 PNCA Chapter 3
- Statutory Framework for National Government Procurement 40 PNCA Chapter 6

Reference was made to the Asia-Pacific Group on Money Laundering (APG): Anti-Money Laundering and Counter-Terrorist Financing Measures; Palau: Mutual Evaluation Report, September 2018, which is available at: <http://www.apgml.org/includes/handlers/get-document.ashx?d=2c0cc104-d8ea-491d-8815-24cf78104604>.

C. Implementation of selected articles

II. Preventive measures

Article 5. Preventive anti-corruption policies and practices

Paragraph 1 of article 5

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society

and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has partially implemented the provision under review.

Palau does not have a specific anti-corruption policy. However, the Government has established the following framework that promotes for transparency and accountability:

- Executive Order No. 419: Establishes a Monitoring and Evaluation Framework for the Implementation of 2030 Sustainable Development Agenda.
- Executive Order 381: Assigns the responsibility of monitoring and evaluating national and sectoral plans under the Bureau of Budget and Planning of the Ministry of Finance, and under the First Addendum of the Executive Order 318, the responsibilities of the Inter Agency Coordinating Group (IACG) were expanded to include monitoring the implementation of the Sustainable Development Goals (SDGs) and incorporating them into the overall development and planning framework of the National Government.
- Public Access to Information: The Open Government Act provides for the right of citizens and non-citizens, including the foreign media, to examine government documents and observe official deliberations of any government agency. The National Government has normally responded promptly to requests and imposed fees only for copying information.

RPPL 9-32 – “The Open Government Act”: Pursuant to Article VIII, Section 12: “The President may introduce measures in the Olbiil Era Kelulau”. The President finds and declares that all government entities, whether quasi or whole, exist to serve the people in the conduct of the people’s business. It is the intent of this Act: that the actions of the government be conducted openly, that all deliberations be transparent, and that all public government documents be open for public inspection. Indeed, this Act is intended to provide a legal framework for the rights that are already guaranteed to the people of the Republic in Article V, Section 12 of the Constitution of the Republic, which states that: “A citizen has the right to examine any government document and to observe the official deliberations of any agency of government”. It is a fundamental aspect of a democracy that government governs the people only with the consent of the people. The people, therefore, in consenting to be governed do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The President hereby finds that the people of the Republic insist upon being informed of the workings of the government so that they may retain control over the instruments of government that they have created for governance with their consent.

A statement was made Mr Satrunino TEWID, the Public Auditor on behalf of the Republic of Palau for the ADB-OECD 5th Steering Group meeting of the Anti-Corruption Initiative in Manila, Philippines, 5-7 July 2004 which reads as follows:

“The Republic of Palau believes that the minimization of corruption stands as a primary column to the other focus areas. Consequently, from the beginning of its independence, and even before, special emphasis has been given to the promulgation of laws that will ensure transparency in government transactions.”

“Major laws promulgated to ensure clear governmental processes include the following:

- The Public Auditing Act – This law mandates the conduct of audits of all agencies and activities of the Republic, including the audit of all National Treasury transactions, including contracts, grants and the disbursement of public funds.
- The Special Prosecutor Act – This law established the Office of the Special Prosecutor, who has the power to investigate and prosecute the national and state governments, and its officials, for violations of the Constitution and laws of the Republic or for failure to implement such laws. The Office, since its creation, has been very active in monitoring and ensuring that public officials spend public funds in an appropriate and lawful manner.
- 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. The law 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.

- The Government Procurement Code – The Procurement code ensures the fair and equitable treatment of all persons who deal with the procurement system of the Republic of Palau national government, or any of its state governments, and applies to construction materials, goods, and services, and the management, control, warehousing, sale, and disposal of construction materials, goods and services.

- The Budget Reform Act – This Act established a performance based budget and reporting system in Palau. The law mandates the generation of information to ensure efficient government, the development of well-defined goals and priorities and strengthens government accountability.

- The Money Laundering and Proceeds of Crime Act – The Money Laundering and Proceeds of Crime Act was enacted in 2001 in order to keep a step ahead of international criminal activity as well as potential corruption at the local level. Stringent bank reporting standards are imposed and criminal penalties for infractions are severe. New safeguards are also pending before the Legislature to better track sizeable cash transactions made through remittance services.

The Republic of Palau is committed to establishing a transparent government at the national and state levels that works to assist the private sector and the people of Palau. As a new nation, institutional integrity is within the grasp of the people and its government officials. The Republic of Palau is therefore in favor of continued assistance to fine-tune its governmental response to the issue of corruption. Our country is thankful for the efforts of the ADB and the OECD in assisting Small Island Developing States to establish local capacity and institutional integrity”.

Palau’s preventive measures also include having in place legislation making acts of corruption (active and passive) as criminal offences under the Penal Code of the Republic of Palau-Title 17 PNC, namely, sections 4100 (1) and 4100 (2) for bribery against public officials and section 3000 subparagraphs (a) and (b) for bribery in the private sector.

A bribery offence under section 4100 is a class “B” felony that carries a sentence of a US\$25,000 fine (section 650) and/or imprisonment of 10 years (section 661).

Commercial bribery under section 3000 is a misdemeanor (imprisonment not exceeding one year and fine of \$1000) except in the event that the value of the benefit referred to in subsection (a) exceeds \$1000, in which case commercial bribery shall be a class “C” felony (ten years imprisonment/\$10,000.00 fine)

The Penal Code also provided for liability of bribery offences committed by corporations and unincorporated associations they are liable under section 227 of the Penal Code, as well as their agents (persons acting, or under a duty to act, on behalf of corporations or unincorporated associations) under section 228.

Apart from the above criminal measures, Palau also puts in place administrative measures to address malpractices or misconduct within the National Public Service System. This takes the form of provisions under the National Public Service System Rules and Regulations, in particular, Part 6 (Outside Employment and Other Activities) and the accompanying sanctions under Part 11 (Dismissals, Demotion and Suspension.)

(b) Observations on the implementation of the article

As noted above, Palau does not have a specific anti-corruption policy. Principles of good governance and anti-corruption are enshrined in the Palau’s 2030 Sustainable Development Agenda, whose implementation is the responsibility of the Inter-Agency Coordination Group (Executive Order 318, first addendum), as well as in government policies including the National Public Service System Rules and Regulations. The reviewers recommended that Palau develop and implement effective, coordinated anti-corruption policies in line with paragraph 1 of article 5 of the Convention, and allocate adequate resources to ensure its effective implementation.

Paragraph 2 of article 5

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has implemented the provision under review.

A number of practices exist:

- Meetings of the Anti-Money laundering (AML) Working Group, established pursuant to an Executive Order, are held quarterly; coordination platform that shares information preventively e.g. incl. on Politically Exposed Persons (PEPs). The FIU is an investigative body under the AML Working Group.
- Since the re-establishment of the Office of the Special Prosecutor.
- An arrangement is in place and cooperation has been established between the Civil Branch of the Attorney-General's Office and the Director of the Bureau of Public Service System (BPSS), whereby consultations are held on procurement, contracts and other matters on the expenditure of public money (advice provided);
- Public Auditor works closely with Special Prosecutor to discuss common issues/matters;
- In 2008-2009, the FIU ran an awareness-raising campaign on television on what corruption is.

(b) Observations on the implementation of the article

As noted above, Palau's Anti-Money-Laundering Task Force engages in ad hoc meetings, the Special Prosecutor meets and files reports with the Attorney General and works closely with the Public Auditor, and the Office of the Attorney-General consults with the Director of BPSS regarding the expenditure of public money.

During the country visit, it was noted that deterrence measures to corruption are taken through the actions taken by the Public Auditor e.g. public awareness. Another corruption preventive mechanism is Palau Foreign Investment Board (<http://fibpalau.com/index.html>), which needs to approve foreign investments, as well as keeps a record and tracks all foreign investments into Palau, including PEPs through a corporations' registry.

Paragraph 3 of article 5

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has partially implemented the provision under review.

It was confirmed that the Attorney-General's Office is seeking to have a scheduled review of regulations on a regular basis.

On an annual basis, each government agency that receives appropriations from the National Congress is required by law to prepare and submit a performance report to the President, the Presiding Officers of the National Congress and the Public Auditor reporting the status of their performance for the previous fiscal year.

(b) Observations on the implementation of the article

As noted above, the Attorney General and Code Commission are seeking to implement new review mechanisms, including to reconstitute the Law Reform Commission.

During the country visit, it was noted that separate Departments or Ministries can conduct their own evaluation of the legal/administrative measures. The Attorney-General's Office provides legal opinions, but the drafting occurs at the Department/ Ministry level or through various avenues include the legislative drafters, for example, in the President's Office for Congress/ Senate. It was noted that there is a review ongoing on Financial Institutions Act with legal experts from the International Monetary Fund.

The Office of the Ombudsman, which could perhaps have been granted the authority to review the adequacy of

administrative procedures and mechanisms, has ceased to exist. The Office has not been in existence for a few years and it was unknown when and if this Office might be revived.

The reviewers therefore recommended that Palau endeavor to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

Paragraph 4 of article 5

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has implemented the provision under review.

Internationally, Palau endorsed the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and its Action Plan. It is also a member of United States Joint Interagency Taskforce West, Association of Government Accountants (International with Regional Chapters, associated with Guam Chapter), Association of Certified Fraud Examiners (self-funded trainings) and works with Embassies e.g. for relevant contacts in other countries, translation services.

Regionally, Palau is a member of the UN Pacific Regional Anti-Corruption (UN-PRAC) Project, together with other Pacific Island countries (Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu) and the territory of Tokelau. Palau is also a member of the Pacific Islands Legal Officers' Network (PILON) – Working Group on Economic Crime and Corruption, Pacific Islands Forum Secretariat, Oceania Customs Organisation, Pacific Immigration Directors Conference, Pacific Patrol Boat Program, Secretariat of the Pacific Community, Pacific Association of Supreme Audit Institutions, Association of Pacific Islands Public Auditors (annual fraud trainings) and various other international law enforcement agencies and the private industry (i.e. Fisheries Forum).

(b) Observations on the implementation of the article

During the country visit, it was confirmed that Palau is a member of the Asia/Pacific Group on Money Laundering, the Pacific Islands Law Officers' Network, the Pacific Islands Forum Secretariat, the Association of Pacific Island Financial Intelligence Units, the Secretariat of the Pacific Community, the Pacific Association of Supreme Audit Institutions (PASAI) and the Pacific Transnational Crime Network.

(c) Technical assistance needs

Palau indicated that it would benefit from technical assistance, specifically:

- (1) Assistance in drafting the National Anti-Corruption Strategy.

Such support has not been provided to date.

Article 6. Preventive anti-corruption body or bodies

Paragraph 1 of article 6

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) *Increasing and disseminating knowledge about the prevention of corruption.*

(a) *Summary of information relevant to reviewing the implementation of the article*

The Republic of Palau indicated that it has partially implemented the provision under review.

Anti-corruption bodies in Palau include:

The Public Auditor

The Office of Public Auditor, headed by the Public Auditor, is an independent agency of Palau. The Office audits and inspects the accounts of the National Government and all its components, State Governments, public legal entities and non-profit organizations that receive public funds from the National Government. The Office of the Public Auditor has the responsibility to detect and prevent fraud, waste and abuse in the collection and expenditure of all public funds. The Public Auditor is required to report allegations of improper or illegal acts disclosed by his audits to the Attorney-General or the Special Prosecutor for possible legal action; the Office of Public Auditor may directly prosecute criminal actions against the President and Attorney-General as well as civil recovery actions when fraud is involved.

The Office consisted of the Public Auditor, seven professional staff (auditors) and two support Staff. The Office used to have one investigator (now with the Special Prosecutor) and previously, a Legal Counsel (now with the Attorney-General's Office).

Ethics Commission

Palau's Ethics Commission is charged with enforcing the Republic's Code of Ethics Act. The Act functions as a code of conduct for elected officials and Government employees of the National and State Governments and include prohibitions of specified conflicts of interest. The Act also requires the filing by public officials of annual financial disclosure statements and by candidates for elective office of pre- and post-campaign disclosure statements. There was no verification process. The Commission acts as a data bank of disclosure statements (from appointed and elected officials), as well as pre- and post- campaign statements (elected officials).

The Commission consists of three Members on the Board and one staff member. Board members are President nominees and are not Government employees.

The Office of Ombudsman

The Office of the Ombudsman was created by Executive Order 400 of the President of the Republic. The Ombudsman is to serve in an advisory capacity only. Efforts to provide a statutory basis for and to strengthen the Office have been unsuccessful to date. The Ombudsman's main function is to assist individuals with grievances regarding services, programs or activities of the National Government.

The Office currently exists with the President's Chief of Staff acting as the Ombudsman, but the Office is not operational.

Bodies that have specialized investigatory/prosecutorial powers, also on corruption-related matters:

Attorney-General's Office

The Attorney-General's Office consisted of two branches - civil (with three lawyers) and criminal (three lawyers). Additionally, there are two support staff and three investigators. The Head of the Office is the Attorney-General, who reports to the Minister of Justice.

Special Prosecutor's Office

The Office of the Special Prosecutor (OSP), headed by the Special Prosecutor, is an independent agency of Palau. By law, the OSP focuses on allegations of government corruption and other forms of government-oriented misconduct. The Special Prosecutors Act authorizes investigation and prosecution of any violations of the laws and Constitution of the Republic of Palau. The breadth of the Act allows the OSP to engage with

other stakeholders in Palau to promote the effective prosecution of crimes such as economic fraud and other financial misconduct by government officials.

Although the OSP is an agency of the National Government of Palau, the OSP investigates and prosecutes misconduct related to any branch of government, any ministry, board, authority, or agency of the National Government and/or any branch, institution, board, authority, or public official or employee of any of the sixteen State Governments constituting Palau. Where possible, the OSP engages with other agencies, including the Office of the Public Auditor, the Ethics Commission, the Foreign Investment Board, and the Financial Intelligence Unit, to name a few, in order to fully investigate criminal activity and effectively prosecute under the Special Prosecutors Act.

The OSP is conducting an open national public awareness campaign on anti-corruption by visiting each of the 16 States. The campaign is interactive with the attendees and includes discussions on defining corruption, white collar crime and ethics. Also, discussed are ways to make complaints either to the OSP or to the Office of the Attorney General. Currently, the OSP has visited 11 States and reached approximately 350 people. The remaining 5 States will be scheduled between March and June of 2019. Members of the Ethics Commission and the Anti-Human Trafficking Unit may also be join for the remaining public awareness discussions. The OSP already received positive feedback from its outreach efforts, including invitations to return and speak on the Ethics Code as violations of this Code result in many government corruption allegations.

The OSP is fully staffed with the SP, an Assistant SP, three criminal investigators, and an administrative officer.

The OSP launched a website, promoting transparency of its quarterly reports, its cases, past and present, and promoting knowledge of applicable laws. The public has access to the website to make complaints, and learn of OSP outreach activities and have access to links of other government agencies: <https://www.palauosp.org/>.

Financial Intelligence Unit

For information on the Financial Intelligence Unit (FIU), please refer to UNCAC article 58.

The FIU consists of the Director, as well as an investigator/analyst.

(b) Observations on the implementation of the article

The Republic of Palau has several bodies that address different aspects of corruption outlined in article 5, but does not have a specific anti-corruption body.

During the country visit, the reviewers were informed that the Vice President through an Executive Order has provided for the Anti-Corruption Taskforce. However, this has not been established to date, and no further details were known on its focus/ mandate.

The reviewers noted the efforts taken by the Office of the Special Prosecutor to increase and disseminate knowledge about how to prevent and address corruption.

The reviewers recommended the establishment of the Anti-Corruption Taskforce, provided for in an Executive Order of the Vice President, in line with paragraph 1 of article 6 of the Convention, and the allocation of adequate resources to ensure its effective functioning.

Paragraph 2 of article 6

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has partially implemented the provision under review.

Independence of the anti-corruption bodies:

The Office of the Public Auditor

The Public Auditor is a constitutional appointment under **Article XII** of the Constitution:

Section 2 (a) A Public Auditor shall be appointed for a term of six (6) years by the President subject to confirmation by the Olbiil Era Kelulau. The Public Auditor may be removed by a vote of not less than two-thirds (2/3) of the members of each house of the Olbiil Era Kelulau. In such event, the Chief Justice of the Supreme Court shall appoint an acting Public Auditor to serve until a new Public Auditor is appointed and confirmed. **The Public Auditor shall be free from any control or influence by any person or organization.**

The powers of the PA is set out under Section 2(b) of the Constitution:

The Public Auditor shall inspect and audit accounts in every branch, department, agency, or statutory authority of the national government and in all other public legal entities or non-profit organizations receiving public funds from the national government. The Public Auditor shall report the results of his inspections and audits to the Olbiil Era Kelulau, at least once a year, and shall have such additional functions and duties as may be prescribed by law [*as provided for under 40 PNCA*].

[It is to be noted that non-profit organizations can include, for example, the Palau Red Cross.]

Powers of the Public Auditor (PA) under the Code of Ethics Act 33 PNC:

Section 11- The PA shall conduct mandatory audits of campaign statements filed by candidates for the Office of President and Vice President of the Republic and shall conduct random audits of other statements filed under this Act. The PA shall conduct an audit of any statement filed under its Act for the purpose encouraging compliance with and detecting violations of this Act. The PA shall conduct an audit of any statement filed under this Act if requested by the [Ethics] Commission, Attorney General, or Special Prosecutor. The PA shall annually prepare and transmit to the [Ethics] Commission, Attorney General and Special Prosecutor a report containing the findings of the PA with respect to the accuracy and completeness of each report and statement reviewed and his findings with respect to any statement or report that should have been but was not filed.

Audits are conducted not just at the National level, but also at the State level. Auditors are accountants or have financial/economic majors. Financial audits (for the National and State Governments) are outsourced to independent CPA firms. With respect to annual financial audit of the National Government, the Public Auditor applies for and receives a grant from the United States to conduct the annual audit. The Public Auditor prepares the tender document, the tender is put to the tendering process and proposals received are evaluated by a Committee established for this purpose. The audit is performed in accordance with US Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States. In addition, the Office of the Public Auditor conduct its audits in accordance with GAGAS. Accordingly, auditors conducting government audits must maintain the minimum amount of Continuing Professional Education (CPE) to comply with GAGAS requirements. The Office of the Public Auditor's professional staff attend annual trainings to ensure they meet the GAGAS CPE requirements. In addition, the Office of the Public Auditor undergoes an External Quality Control Review (Peer Review) triennially to ensure it complies with the GAGAS.

The Auditor's Office is exempt from the National Civil Service System, but still abides by the Public Service Rules. The Public Auditor can hire staff based on the needs of the Office. There is an induction programme (working closely with University of Guam and the Palau National Scholarship Board to recruit young professionals; also offering an internship programme), as well as ongoing training opportunities e.g. approx. 2-3 trainings per year (overseas) and experts come to Palau to conduct in-country training.

The Public Auditor is independent and is free to choose areas or programs to audit. The Office of the Public Auditor also receives requests from National Congress and/or the executive Branch to audit a specific program.

The Public Auditor is independent in decision-making with respect to hiring of staff, promotions, disciplinary actions, etc., subject to availability of funds in the Public Auditor's budget. The Public Auditor can hire accountants, lawyers, engineers, financial analysts, etc. The Public Auditor is in charge of his own budget, once approved by National Congress.

It was further noted that pursuant to section 11 of 33 PNC, the Public Auditor has never conducted a mandatory audit of campaign statements. Also, the Public Auditor has, to date, not been requested to conduct an audit of any statements filed under the Act by the Ethics Commission, Attorney-General or Special Prosecutor.

The Public Auditor also serves as Chairman of the Palau Board of Accountancy who is responsible for accepting, reviewing and screening applications to practice public accountancy in the Republic of Palau. Once an applicant meets the requirements of the Public Accountancy Act, the Board grants licenses and permits to practice.

The Ethics Commission

Established through the Code of Ethics Act approved by Palau's legislature, the Olbiil Era Kelulau (OEK) or National Congress on 4th August 1999.

Section 10 (a): There is established a commission to be known as the Ethics Commission. The Commission shall consist of three members appointed by the President with the advice of the Senate. The term of each member shall be four years. Members of the Commission shall hold no other public office or public employment. The Chairman of the Commission shall be elected by a majority of the Commission. Members of the Commission may be removed by the President for good cause.

Among the authorized powers of the Ethics Commission are:

- Section 10 (g) The Commission shall initiate, receive, and consider charges concerning alleged violations of this Act, initiate or make investigations, and hold hearings.
- Section 10 (h) The Commission may subpoena witnesses, administer oaths and take testimony relating to matters before the Commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the Commission. Before the Commission may exercise any of the powers authorized herein with respect to any investigation or hearing, it shall, by a vote of a majority of its members, define the nature and scope of inquiry.
- Section 10 (i) On an affirmative vote of a majority of its members, the Commission shall have authority to bring civil actions on its own behalf, and take other actions consistent with the law to enforce the provisions of this Act.

Limited ability to function with one staff member and two Board Members. There is also limited training available.

Bodies that have specialized investigatory/prosecutorial powers, also on corruption-related matters:

Attorney-General's Office

The Attorney General is appointed by the President and is part of the Ministry of Justice. The Ministry of Justice is created by 2 PNC § 105, and its functions are laid out in the statute as follows:

§ 105. Functions of Ministry of Justice.

- (a) The Ministry of Justice 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, labor, and related matters.

The Attorney General is appointed by 10 PNC § 1001 to sit on the Code Commission, which is responsible for publishing all statutes and regulations in Palau.

EXECUTIVE ORDER NO. 288

Section 1. Office of the Attorney General.

The Office of the Attorney General shall be headed by the Attorney General who is appointed by and serves at the will of the President. The Office shall employ such staff as necessary to carry out its functions and shall be responsible for providing legal services to the Republic, without limitation including: prosecuting criminal and civil cases on behalf of the Republic; representing and advising all Executive Branch ministries, divisions and agencies on legal matters; as requested by the President and the Ministers issuing written legal opinions; providing legal services to the Procurement Officers; drafting, reviewing and certifying government contracts as required by law or as requested by the President; reviewing legislation as requested by the President; processing petitions for corporate charters; registering foreign corporations; overseeing the activities of the Publication and Law Access Unit (PALAU); and performing such other duties as provided by statute or as assigned by the President or the Minister of Justice.

The Office of the Special Prosecutor

The Office of the Special Prosecutor is created by the Special Prosecutor Act under Title 2 of the Palau National Code, Chapter 5, which states:

§ 502. Office of the Special Prosecutor; creation; appointment; removal.

There is hereby created an Office of the Special Prosecutor for the Republic of Palau. The Office shall be headed by a Special Prosecutor appointed for a term of five years by the President with the advice and consent of the Senate and shall be within the Office of the President for budget purposes only. The Special Prosecutor shall within 30 days of assuming office, become licensed to practice law before the courts of the Republic as a condition of retaining office. Rule 3 of the Palau Rules of Admission for Attorneys shall be modified so that he may practice law in Palau as a Special Prosecutor for 5 years without taking the Palau bar examination. The Special Prosecutor will not be removed from his duties except for cause and without the President's first consulting the President of the Senate and the Speaker of the House of Delegates and ascertaining that their consensus is in accord with his proposed action. The President must appoint a Special Prosecutor within 30 days of receipt of a Joint Resolution from the Olbiil Era Kelulau requesting such appointment. In the event of the President fails to so appoint, the Olbiil Era Kelulau may appoint a Special Prosecutor by Joint Resolution of the Olbiil Era Kelulau pursuant to Article IX, Section 5(20) of the Constitution of the Republic.

The powers of the SP are set out under § 503(a) and (b), as follows:

(a) The Special Prosecutor shall have the following powers, functions and duties:

- (1) to receive complaints of, investigate and prosecute on behalf of the people, the national and state governments, or some combination thereof, any and all allegations of violations of the Constitution, laws of the Republic, laws of the Trust Territory, District Code laws, prior present and future, or failure to implement such law of the Republic by elected or appointed officials and employees of the national government and state governments;
- (2) to act as the prosecutor for the national government in any case in which the Ministry of Justice is unable to prosecute because of an actual or potential conflict of interest or other ethical considerations;
- (3) to inspect personally, or by his duly authorized assistants, all books, records, accounts and property owned or in the possession of the national government and state governments, their subdivisions and agencies;
- (4) to require the aid and assistance of all national officials and employees and any custodian of public funds or property at all times in the inspection and examination of all books, records, accounts and property of the national government;
- (5) to hire such staff as may be necessary to carry out its functions under this chapter;
- (6) on the basis of probable cause or after a complaint has been filed, to subpoena witnesses, administer oaths, and obtain testimony; and
- (7) to enter contracts with attorneys licensed to practice before the courts of other jurisdictions in order to have such attorneys make appearances in such courts on behalf of the Special Prosecutor as are necessary to carry out the powers, functions, and duties of the Office.

(b) In exercising his authority, the Special Prosecutor will have the greatest degree of independence that is consistent with the President's constitutional and statutory accountability for all matters falling within the jurisdiction of the Executive Branch. The President will not countermand or interfere with the Special

Prosecutor's decision or actions. The Special Prosecutor will determine whether or and to what extent he will inform or consult with the President about the conduct of his duties and responsibilities.

Powers of the Special Prosecutor under Title 33, Public Employment, of the Palau National Code, i.e., the National Public Service System Act.

Most of the prosecutions against government officials by the Office of the Special Prosecutor fall under the Code of Ethics Act, Chapter 6. The type of crimes for which the OSP prosecutes under this Act includes:

- § 602. Use of non-public information.
- § 603. Use of government property.
- § 604. Conflict of interest.
- § 605. Disclosure of financial interests.
- § 606. Campaign statements.
- § 607. Acceptance and use of contributions.
- § 608. Conflict of interest.
- § 609. Disclosure of financial interests.

Prosecution of the above crimes may also lead to additional, linked, more conventional crimes. This may include any criminal activity prohibited under the Palau National Code.

Measures of Enforcement and Transparency

The OSP is engaging in ongoing training of its personnel in order to promote efficient and timely investigation and prosecutions of complaints made to the OSP.

FINANCIAL INTELLIGENCE UNIT

In 2014, the Republic of Palau legislature, the Olbiil era Kelulau (OEK), passed legislation adopting a new Criminal Code of which a portion was devoted to the establishment of a completely autonomous Financial Intelligence Unit (FIU). Pursuant to 17 PNCA §3331 “[t]he Financial Intelligence Unit shall be an *independent agency* responsible for receiving, analyzing, investigating and disseminating information concerning suspected proceeds of crime and terrorist property...” (Emphasis added) The FIU has its own budget as determined by the Director of the FIU. 17 PNCA §3336(a). The Director of the FIU reports only to the Board of the Financial Institutions Commission. Id. at 3332(b).

The Palau FIU is legislatively charged with the duty to receive “cash-transaction reports” and “suspicious transaction reports,” to “investigate” the nature of any such intelligence gathered by the FIU in order to detect possible money laundering and/or terrorist financing offenses, but the Palau FIU is not charged with “criminal investigations” or prosecutorial duties.

Penal Code:

PART IV THE FINANCIAL INTELLIGENCE UNIT

Section 3331. Financial Intelligence Unit.

(a) The Financial Intelligence Unit established by the Money Laundering and Proceeds of Crime Act 2001 shall continue to be established as if established by this Act. (b) The Financial Intelligence Unit shall be an independent agency responsible for receiving, analyzing, investigating and disseminating information concerning suspected proceeds of crime and terrorist property, as provided for under this Law.

Section 3332. Director.

The Director of the Financial Intelligence Unit shall be appointed by the Governing Board of the Financial Institutions Commission on such terms and conditions as the Board may determine in consultation with the Money Laundering Working Group (MLWG).

(a) The Director may exercise all of the functions, powers and duties of the Financial Intelligence Unit under this Act, and any regulations promulgated under the authority of the Money Laundering and Proceeds of Crime Act of 2001, such regulations shall remain in full force and effect as if promulgated under this Act.

(b) The Director shall report to the Governing Board of the Financial Institutions Commission on the exercise of his or her powers and the performance of his or her duties under this Chapter.

- (c) The Director may appoint such other officers and employees of the Financial Intelligence Unit as are necessary for the efficient exercise of the duties, functions and powers of the Financial Intelligence Unit.
- (d) The Director may authorize any person subject to any terms and conditions that the Director may specify, to carry out any power, duty, or function conferred on the Director under this Chapter.
- (e) The Director shall ensure that an officer, employee or agent of the Financial Intelligence Unit received training or will receive training in the investigation of financial crimes, intelligence analysis and financial auditing as are necessary for the efficient exercise of the duties, functions and powers of the Financial Intelligence Unit.
- (f) To assist with the creation, organization, training and operation of the Financial Intelligence Unit, the Director of the Financial Intelligence Unit may obtain technical assistance from foreign countries or international organizations, including but not limited to, the temporary employment of foreign law enforcement and intelligence consultants.
- (g) The Director shall ensure that an officer, employee or consultant of the Financial Intelligence Unit, or any other person acting on behalf of the Financial Intelligence Unit, shall take an oath of confidentiality and shall receive credentials that identify that person has been authorized to act on behalf of the Financial Intelligence Unit.
- (h) The Director may generally or particularly, delegate to any employee or agent of the Financial Intelligence Unit, as he or she thinks fit, all or any of the powers in the same manner and with the same effect as if they had been conferred to him or her directly by this Chapter and not by delegation.
- (1) Subject to any general or specific directions given or conditions attached by the Director, the employee or agent to whom those powers are delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on him or her directly by this Chapter and not by delegation.
- (2) Until a delegation is revoked in writing, it continues in force according to its tenor and in the event of the Director ceasing to hold office, the delegation continues to have effect as if made by the person for the time being holding office as Director.
- (3) Every delegation made under this Section is revocable at will and no delegation prevents the exercise of any power by the Director.
- (i) Any officer, employee or agent of the Financial Intelligence Unit may at any time be removed or suspended from office by the Director for disability affecting the performance of duty, neglect of duty, incompetence or misconduct proven to the satisfaction of the Director.

Section 3334. Powers, duties and obligations of Financial Intelligence Unit.

To properly implement its functions under this Law, the Financial Intelligence Unit shall have the following powers and duties:

- (a) to receive information and reports in accordance with its functions and, in relation to any information or report it has received, to make inquiries with or obtain from any financial institution any additional information the Financial Intelligence Unit deems necessary to carry out its functions, regardless of whether the requested person has made a report. The information requested shall be provided within the time limits and the form specified by the Financial Intelligence Unit;
- (b) to analyze and assess any report or information received in accordance with its functions;
- (c) for transactions or attempted transactions that occurred prior to the entry into force of this Act, to require financial institutions and designated non-financial business and professions to disclose records in the financial institution's or the designated non-financial business and profession's control, that pertain to the transaction or attempted transaction for a particular account for or by a particular person, and for a particular time period, if such disclosure would have been required to be reported under the provisions of this Act if it had been in effect during the particular time period in question;
- (d) to enter the premises of any financial institution or designated non-financial business and profession during ordinary business hours to inspect any records kept pursuant to this Act and that are necessary to the fulfillment of the functions of the Financial Intelligence Unit, and to ask any questions and make enquiries relating to and make notes and take copies of such records;
- (e) in relation to any report or information it has received in accordance with its functions, to obtain or collect any information it deems necessary to carry out its function, whether or not publicly available, including commercially available databases or information and information stored in databases maintained by other government agencies that may hold relevant information such as Bureau of Revenue, Customs and Taxation, Bureau of Public Safety, Office of the Attorney General or other competent supervisory authorities;
- (f) to act on behalf of the Republic of Palau in seeking information from any foreign government agency, foreign law enforcement agency, foreign supervisory authority and foreign auditing authority for purposes of this Law;

(g) to refer any report or information it has received in accordance with its functions to the appropriate law enforcement agency in the Republic of Palau if, on the basis of its analysis and assessment, the Financial Intelligence Unit has reasonable grounds to suspect that a transaction or attempted transaction involves proceeds of crime, or is related to or intended for financing of terrorism, or is terrorist property;

(h) to apprise the competent supervisory authority whenever it appears that a financial institution or designated non-financial business and profession, or any of its respective directors, officers or employees, is not complying or has not complied with the obligations under this Law or any regulation issued in execution of this Law;

(i) to destroy a suspicious transaction report received or collected on the expiry of six years after the date of receipt of the report if there has been no further activity or information relating to the report or the person named in the report, or six years from the date of the last activity relating to the person or report, whichever date is later;

(j) to instruct any financial institution or designated non-financial business and profession to take such steps as may be appropriate in relation to any information or report received by the Financial Intelligence Unit to enforce compliance with this Law or to facilitate any investigation anticipated by the Financial Intelligence Unit or a law enforcement agency;

(k) based on reasonable grounds to suspect that a transaction or attempted transaction involves proceeds of crime, or is related to or intended for financing of terrorism, or is terrorist property, to direct in writing that the financial institution or designated non-financial business and profession involved in the transaction either proceed or refrain from proceeding with the transaction or attempted transaction, for a period to be determined by the Financial Intelligence Unit.

(1) Any direction must not exceed five working days if the direction is in writing.

(2) Any direction given orally must not exceed 24 hours and must be confirmed in writing within 24 hours of the oral direction.

(3) Before the expiration of five days of giving the direction, the Financial Intelligence Unit may apply to the Supreme Court for an order to extend the period of the direction.

(l) to issue guidelines to financial institutions and designated non-financial business and professions on the manner of transaction reporting under Part III of this Chapter, including specification of reporting forms, content of transaction reports and the procedures that should be followed when reporting transactions;

(m) to provide feedback to the financial institution, designated non-financial business or profession and any relevant government department, office, agency or institution regarding outcomes relating to the reports or information provided by it under the provisions of this Law;

(n) to provide training programs for financial institutions and designated non-financial business and professions in relation to reporting obligations, and the identification of suspicious transactions;

(o) to conduct research into and compile and provide information and statistics on trends and developments in the area of money laundering, the financing of terrorism, and ways to detect, prevent and deter such activities;

(p) to educate the public and create awareness on matters relating to money laundering and the financing of terrorism;

(q) to cooperate and share information with other domestic competent authorities;

(r) to assist competent authorities to investigate or prosecute any offense;

(s) to provide information to and assist competent authorities to apply seizing and confiscation measures pursuant to 17 PNC Chapter 7; or to freeze property under 17 PNC Chapter 33, Part V;

(t) to advise financial institutions and designated non-financial business and professions of concerns about weaknesses in the anti-money laundering and countering financing of terrorism (AML/CFT) systems of other countries;

(u) to cooperate, share information and enter into agreements or arrangements with foreign government institution or agency, or any international organization, in accordance with 17 PNC section 3334; and

(v) to report in writing to the Governing Board of the Financial Institutions Commission of the Republic of Palau prior to the end of each fiscal year on the activities of the Financial Intelligence Unit during the previous year and the expected activities of the Financial Intelligence Unit during the subsequent year, without disclosing confidential information or information that may jeopardize an ongoing investigation or prosecution.

(w) to promulgate any rules and regulations as may be necessary to give effect to the intent of Chapter 33 of this title of the Palau National Code; in addition, any regulations previously promulgated by the Financial Intelligence Unit under the authority of the Money Laundering and Proceeds of Crime Act of 2001 shall remain in full force and effect as if promulgated under the authority of this Act.

Section 3335. Budget.

- (a) The Financial Intelligence Unit shall be responsible for its own budget to be determined by the Director of the Financial Intelligence Unit.
- (b) The Financial Intelligence Unit shall prepare for each new financial year an annual budget of revenue and expenditure which shall be submitted to the Olbiil Era Kelulau at least two months prior to the commencement of the financial year.
- (c) The Financial Intelligence Unit is subject to examination and audit by the Office of the Public Auditor.

(b) Observations on the implementation of the article

Generally, the bodies charged with preventing corruption in Palau have provisions in their enabling legislation codifying their independence. The Public Auditor, Attorney-General, Special Prosecutor are appointed by the President (for the Public Auditor, this is subject to confirmation by the Olbiil Era Kelulau and for Special Prosecutor, by the Senate) to serve a set term. The three members of the Ethics Commission are appointed by the President with the advice of the Senate, and the Chairperson of the Commission is elected by the majority of the Commission (s. 10(a), Code of Ethics Act). The Director of the FIU is appointed by the Governing Board of the Financial Institutions Commission (s. 3331, Part VI. The Financial Intelligence Unit, Penal Code).

The Public Auditor inspects and audits accounts of the National Government and public legal entities or non-profit organizations receiving public funds from the National Government. The Public Auditor also conducts audits at the State level. The Public Auditor is constitutionally free from control or influence by any person or organization. Annual financial audits of the National Government are funded by the United States and performed in accordance with US Generally Accepted Government Auditing Standards. The Office of the Public Auditor receives training to ensure they meet GAGAS requirements and is subject to an External Quality Control Review to ensure compliance with the GAGAS. In choosing areas or programs to audit, the Public Auditor may independently decide but also receives requests from National Congress and/or the Executive Branch. The Public Auditor independently hires and manages its staff and controls its own budget, once approved by National Congress. During the country visit, the reviewers were informed that there were nine employees in the Office of the Public Auditor. Removal of the Public Auditor requires a two-thirds vote of each House of the Olbiil Era Kelulau (s. 2(a), art. XII, Constitution).

The Ethics Commission is charged with enforcing the Code of Ethics Act and has investigatory powers. Before exercising its powers, the Commission must define the nature and scope of the inquiry by a majority vote of its members. During the country visit, the limited resources of the Ethics Commission were outlined, including there only being one staff member and two Board Members.

The Special Prosecutor exists within the Office of the President for budget purposes only. The Special Prosecutor has investigative and prosecutorial powers. The Special Prosecutor is statutorily independent, consistent with the constitutional and statutory powers of the Executive Branch. During the country visit, it was provided that the President cannot interfere with the Special Prosecutor's decisions or actions (see also title 2, section 503 (b) of the Palau National Code). The Special Prosecutor may only be removed for cause and prior to removal, the President must obtain consent from the President of the Senate and the Speaker of the House of Delegates (s. 502, Special Prosecutor Act).

The Financial Intelligence Unit is an independent agency with its own budget determined by the Director of the FIU. The Director reports to the Board of the Financial Institutions Commission. The FIU may investigate possible money laundering and/or terrorist financing but cannot conduct criminal investigations or prosecutorial duties.

The reviewers recommended that Palau enact legislation to establish the Office of the Ombudsman and ensure that the necessary materials resources and specialized staff, as well as training for staff to carry out their functions, are provided to notably the Office of the Ombudsman and Ethics Commission.

(c) Successes and good practices

The reviewers highlighted the independence of the Office of the Special Prosecutor and its ability to function effectively and free from undue influence as a good practice.

Paragraph 3 of article 6

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has not implemented the provision under review.

(b) Observations on the implementation of the article

Palau was reminded to communicate the names and addresses of the authorities that may assist other States parties in developing and implementing anti-corruption measures to the Secretary-General of the United Nations.

(c) Technical assistance needs

Palau indicated that it would benefit from the following technical assistance:

Assistance in institution-building of relevant institutions tasked with preventing and combatting corruption, including the Office of the Special Prosecutor;
Legislative support and support in defining the scope and functions of the Ombudsman and training for the Ethics Commission.

Such support has not been provided to date.

Article 7. Public sector

Paragraph 1 of article 7

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honorable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has partially implemented the provision under review.

Legal framework for the recruitment, hiring, retention, promotion and retirement of civil servants in the Palau Civil Service comprises of:

- (1) National Public System Act (33 PNC); and
- (2) The Public Service System Rules and Regulations.

In relation to subparagraph (a):

Merit principles of the Public Services System - 33 PNC § 202.

The National Public Service System shall be administered in accordance with the merit principles set forth below:

- (a) Equal opportunity for all regardless of sex, race, religion, political affiliation or place of origin.
- (b) Non-discrimination based on physical handicap; provided that the employment of a physically handicapped person will not be hazardous to the appointee or endangers the health or safety of his fellow employees or others.
- (c) Impartial selection of the ablest person for the public service by means of tests, which are fair, objective, and practical.
- (d) Just opportunity for competent employees to be promoted within the public service.
- (e) Reasonable job security for the competent employee, including the right of judicial review of personnel actions as provided in this division.
- (f) Systematic classification of all positions through adequate job analysis.
- (g) Proper employer-employee relations to achieve a well-trained, productive and happy work force.

33 PNC 202 sets forth guidelines for impartial hiring, with several exceptions. One exception states that an appointment to a position is exempt from the guidelines in 33 PNC 202 if "the service to be performed is special or unique and non-permanent, is essential to the public interest and that, because of the degree of expertise or special knowledge required and the nature of the services to be performed, it would not be practical to obtain personnel to perform such service through normal public service recruitment procedures."

Recruitment

Part 3.1 PSS Rules & Regulations. (x-ref 33 PNC Section 402)

No person shall be appointed to any position not exempt from the Public Service System until and unless that position has been properly established, classified and authorized for recruitment.

The recruitment of officials into the National Public Service of Palau is conditional upon the applicant undergoing through "careful examination and/or evaluation conducted by the Director of Public Service System as provided under Part 3.1 in order for the applicant to be eligible to be selected (Part 4.1)

Vacancies and examinations for recruitment shall be announced and posted in appropriate places and shall be given the widest publicity justified for the vacancy (Part 3.3): (a) Radio, newspapers, television, other forms of media; (b) announcements to the attention of personnel under jurisdiction of appropriate management officials; (d) the Director of the Bureau of Public Service System shall determine the coverage of examination announcements based on the availability of skills within the area in which a vacancy is located; and (d) with the exception of promotional examinations or as otherwise provided by law, all examination shall be open to the public

Admission to all examinations shall be conditioned by appropriate standards of health, physical condition, age, training, experience, and character as are deemed necessary and proper by the Director for the class for which the examination is to be given.

The Director of the Bureau of Public Service System, as provided for under Part 3.12, may refuse to examine and/or evaluate an applicant for any the following reasons:

- (a) Failure to meet the minimum qualification requirements for admission to the examination;
- (b) Unsatisfactory physical or mental health conditions;
- (c) Habitual or excessive use of drugs, narcotics, or intoxicating beverages;
- (d) False statements, or attempting to practice deception or fraud in his application;
- (e) Failure to file for examination within the dates specified by the examination announcement; or
- (f) Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct detrimental to the performance of duties of the position for which he has applied.

Ratings of Examination (Part 3.16)

Appropriate scientific and statistical techniques and procedures shall be used in scoring and rating examinations and determining the relative ranking of candidates on competitive examinations.

Review of Examination Results (Part 3.17)

Any applicant may request a review of his rating within 10 working days following the notification of examination results

Promotion (Part 4.3)

Permanent employees in the Public Service System are promoted conditional upon passing promotional examination in accordance with Part 3.7 in order to be listed on the Promotional List (Part 4.3) as well as Departmental Promotional Requests (Part 4.7)

Prohibition of Nepotism (Part 5.7)

First degree sanguinity is hereby prohibited in cases of direct supervisor/subordinate relationship. Spouses and persons within the first degree of sanguinity may not be employed in the National Government in a supervisor/subordinate relationship. Any exception for the best interest of the National Government shall be subject to approval by the Board.

Retirement (Pension Plan and Retirement Fund Act 1987 - Chapter 20 of 33 PNC)

33 PNC § 2040. Mandatory retirement.

(a) Upon the effective date of this Act, all employees who are sixty (60) years of age or have thirty (30) years or more of total service shall retire, except for those in employment positions exempted by the Board or those individuals who receive specific exemptions from the Board; provided, that an exempted employee may serve two (2) additional two years or more beyond the date upon which he or she would otherwise be required to retire under this section, at the discretion of the employer.

(b) [Reserved].

(c) Each employee of the national government shall provide written notice to the appropriate management official six (6) months before retiring, except for those employees retiring pursuant to the mandatory retirement program under subsection (a). The Board shall waive the requirement that retiring employees provide six (6) month's notice in cases where the appropriate management official certifies to the Board in writing that requiring such notice would not be in the best interest of the national government, or where the requirement would result in undue hardship on the employee. Employees eligible to retire before January 1, 1997 may do so without providing the six- month written notice.

In relation to subparagraph (b):

Recruitment to positions vulnerable to corruption

There are no specific provisions for recruitment to positions vulnerable to corruption in the Palau Public Service System. However, the PSS Rules and Regulations provide for the disqualification of an applicant from being eligible for the Public Service System in circumstances under Part 3.12 (f) and Part 4.6 (g) of the Public Service System Rules and Regulations.

Under Part 3.12 (f), the Director of the Public Bureau of Public Service System may refuse to examine an applicant for reasons of "criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct detrimental to the performance of duties of the position for which he has applied".

Under Part 4.6 (g), the Director of the Public Bureau of Public Service System may remove the name of the eligible if he is found by the Director to be no longer qualified to perform the duties required of the class or position.

Training for positions vulnerable for corruption

Generic provisions for all classes of public officials under **Part 7 of the Public Service System Rules and Regulations.**

It is the responsibility of Board of National Civil Service to:

Increase worker's effectiveness in jobs; improve morale; decrease labor turnover; prepare new employees to do jobs for which they are not trained; provide effective means of screening and placement; and prepare employees for filling responsible jobs and upward mobility; **to train and develop a viable Public Service work force.**

In relation to trainings, there is a general induction programme. This includes a training on the procedures, PS Rules and Regulations, as well as specific topics in the Public Service Act. Select officials have specific leadership trainings and other trainings (e.g. excel), which has been conducted on a case-by-case basis.

There is a regular rotation policy in the Division of Customs, which is only Department to have this.

No special procedures for vulnerable sectors other than the Health Department, which has a specific Human Resources Board.

Part 7.7 of Public Service System Rules and Regulations provides for an evaluation of trainings:

“The Director of the Bureau of Public Service System will develop and maintain a system which will provide information and analysis of the effectiveness of training provided. Such analysis will be used to alter training courses where needed and in training needs surveys. All personnel who attend and return from training courses within or outside the Republic of Palau will be required to submit a written report including a summary of the course, along with a judgment of the added value gained from the course. Such report shall be addressed to the Director, the Chairman of the Board, and a copy sent to the appropriate management official.”

In relation to subparagraph (c):

The legislative framework in meeting the requirements of this article under review are as follows:

- **National Public System Act 33 PNC**

33 PNC § 407. Compensation plan; uniform base salary schedule.

There shall be one salary schedule for all national government employees, with the exception of those specifically exempted under section 205(a) of this division. Such uniform base salary schedule shall be provided for by law.

33 PNC § 408. Same; salary levels.

The Director (of Bureau of Public Service System) shall assign a salary level, based on applicable and established base salary levels, to each position occupied by employees of the national government, except those positions exempted under the provisions of section 205(a) of this division.

33 PNC § 409. Same; periodic review.

The Director (of Bureau of Public Service System) shall periodically conduct necessary and appropriate studies of rates of compensation and compensation practices in all geographic areas from which employees for the public service are normally recruited, and shall recommend and transmit the same to the President and the Olbiil Era Kelulau for further action. In developing such plan and schedules, consideration shall be given to the following:

- (a) the minimum standard of living which is compatible with decency and health.
- (b) the general economic conditions of the Republic.
- (c) compensation practices and conditions of the labor market.
- (d) conditions of employment in the public service in the Republic.
- (e) such other matters as the Director deems appropriate.

- **Part 16 of Public Service Rules and Regulations-Compensation**

Regulation 16.2 - Compensation

The Director of the Bureau of Public Service System shall assign all classes in the Position Classification Plan to appropriate pay levels in the Base Salary Schedule in accordance with the following:

Kind and level of work;

Degree of difficulty and responsibility;

Kind, quality and level of qualification requirements;

Relationship to other classes in its occupational group, and of its occupational group to other occupational group;

Long-range recruitment market place experience.

- **Part 17 of Public Service Rules and Regulations (Compensation adjustment following personnel action)**

(a) An employee whose position is reallocated to a class assigned a higher pay level shall be compensated at the lowest step in the higher pay level which at least equals the amount of a one (1) step increase in the lower pay level.

(b) An employee whose position is reallocated to a class assigned a lower pay level shall be compensated at that rate in such lower pay level which does not exceed his existing rate. His service anniversary date shall remain unchanged. Where the employee's existing rate is beyond the maximum step of the lower pay level, he shall be compensated at such maximum step of the lower pay level. He shall receive any benefits due to any future changes in salary rates.

(c) The service anniversary date of an employee retained in a reallocated position shall not change." (17.1 Reallocation of Position)

Employees may be granted merit increases not to exceed one step increase in the base pay rate, for sustained superior performance over a period of one (1) year or more. No employee may receive more than one merit increase in a twelve (12) month period. A merit increase does not interrupt the minimum waiting period required to qualify for a within-grade increase.

1. Procedures. To request a merit increase, the supervisor will prepare a memorandum of not more than one typewritten page in length, which must include the following:

(i) Statements descriptive of areas in which the employee has excelled, e.g., initiative, judgment, quality, productivity, job knowledge, and communications. For supervisory positions, such additional factors as training of others, leadership, and job planning must be described.

(ii) Statements must clearly relate the foregoing with the most important and key duties and responsibilities within the employee's position. For example, productivity in terms of volume could be critical in some positions such as in clerical work but of little importance in teaching positions. Also, it must be recognized that positions often contain a variety of duties with some being less difficult or less responsible than others. For obvious reasons, a recommendation and request for a merit increase cannot be based on these lower aspects of a position.

An employee who has attained the top salary step may not be accorded a merit increase, and other means should be sought to recognize superior performance. The Incentive Awards Program is one means of recognizing superior performance.

An employee receiving a merit increase will also receive his next within-grade increase based on satisfactory performance and completion of the prescribed waiting period since his last within-grade increase.

Responsibilities. The employee's supervisor is responsible for initiating and preparing the request for a merit increase. Required documentation consists of the memorandum of justification (cited above) and the appropriate form, signed by the employee's supervisor. The effective date of a merit increase shall be the beginning of the pay period following its approval. All employees' supervisors should remain aware that the primary purpose of a merit increase is to recognize sustained superior performance only. It is not to be used as a means or device to compensate an employee where a supervisor has not been able to obtain a promotion for the employee, or where the supervisor is of the opinion that the pay level of the position is too low, or for any other reasons unrelated to excellence in the performance of duties. The Board is responsible for review of all requests for merit increases for completeness, accuracy, and compliance with established requirements. Inappropriate or improperly substantiated requests will be returned to the initiating organization, without action, for such corrective measures as may be deemed necessary. Properly documented requests for merit increase will be reviewed for final approval by the Board. If approved the Board shall return approved requests for merit increases to the appropriate management official, who shall then be responsible for timely distribution of the requests to the Payroll Section of the Bureau of the National Treasury for required action." (17.4(B) Merit Increases)

In relation to subparagraph (d):

Generic provisions for all classes of public officials are provided for under Part 7 of the Public Service System Rules and Regulations.

Part 7.1 Policy

Insofar as appropriate training increases worker's effectiveness in jobs; improves morale; decreases labour turnover; prepares new employees to do jobs for which they are not trained; provides effective means of

screening and placement; and prepares employees for filling responsible jobs and upward mobility; and in so far as it is a major commitment of this government to train and develop a viable Public Service System force..

Part 7.2 -Types of training:

- Job-skill Training: The type of training in which the primary purpose may be (1) to improve an employee's performance in the position in which he is currently employed; (2) to prepare an employee to move laterally in the same or related classes of positions;
- Promotional Training: The type of training which an employee undergoes in order that he may be able to perform with average efficiency the minimum tasks required in the position to which he is being trained;
- Employee Development: The type of training which is offered to an employee so that he can broaden his background or broaden his perspectives in his own or related occupational areas.

Part 7.4- External Training: Training courses given by agencies outside the Republic of Palau will be utilized to the extent budgets will permit.

On **recruitment**, Ministers in Executive Branch make a request through a personnel action form to BPSS. A post is advertised for a minimum of 10 working days (inside and outside of the Republic). There are always minimum requirements, focusing on education and experience required for the position. After 10 working days, there will be a review of the applications received and anyone eligible is put on an eligibility list (short listed). This is then forwarded to the requesting official, who is required to conduct an interview (BPSS is not required to in sit on the interviews). The requesting official selects the applicant and informs the BPSS (human resources). BPSS then either approves or disapproves the recommendation. There is no Board for the public service, except a specific Board for personnel being recruited into the Ministry of Health.

The Regulations provide for examinations to be conducted when recruiting, but there is no need for written tests. A special clearance is required for law enforcement. Police checks are carried out and there has been 1 example of where a person has been disqualified because of a background check on her criminal record. If there were an appeal, it would go to the Human Resources Director; otherwise, it could be taken to the courts or the Ombudsman (the latter has never been done).

It was provided that if a public official were convicted (even of a felony), then s/he would not lose her/his eligibility to receive a **pension**.

Judicial training is provided through the Pacific Judicial Council (via the 9th Circuit of the USA) for the judiciary as a whole (Chief Justices, Justices and personnel). The Palauan Judiciary sends the Justices (nine) to the US every two years. In general, each Justice might get to benefit from three trainings per year. The Judicial College in Nevada also offers courses that Palau can benefit from. Experts (e.g. legal writing, evidence) can also be drawn on.

The Palauan Judiciary has a special relationship with the Judiciary of Guam and can also seek support through the Pacific Judicial Development Programme (Australia/NZ programme); the Programme focuses on the Justices, but also occasionally on personnel.

The Australian Government, together with the New Zealand Police and the Asia/Pacific Group on Money Laundering, held a training entitled "Money Laundering and Criminal Asset Confiscation Investigation Training," on December 11-14, 2018, in Koror, Palau. This conference was attended by members of the Attorney General's Office and Financial Intelligence Unit.

The Government of Malaysia under its Malaysian Technical Cooperation Programme-Malaysia Anti-Corruption Academy (MTCP-MACA) anti-corruption capacity building programme has offered for officers from the Palau Public Service to benefit from Malaysia's expertise and trainings on offer.

(b) Observations on the implementation of the article

As noted above, there are two components of Palau's legal framework for the recruitment, hiring, retention, promotion and retirement of civil servants, the National Public System Act (33 PNC) and the Public Service

System Rules and Regulations. Departmental Codes of Conduct take effect in addition to the general Rules and Regulations.

In relation to subparagraph (a), 33 PNC § 202 integrates merit principles into the Public Service System. Section 202 also sets forth guidelines for impartial hiring, which include merit principles such as equal opportunity for all regardless of sex, race, religion, political affiliation or place of origin, non-discrimination based on physical handicap, impartial selection of the ablest person and just opportunities for competent employees to be promoted. There are several exceptions, including cases in which "the service to be performed is special or unique and non-permanent, is essential to the public interest and that, because of the degree of expertise or special knowledge required and the nature of the services to be performed, it would not be practical to obtain personnel to perform such service through normal public service recruitment procedures." It was mentioned to the reviewers that there has been an abuse of this in the past. The reviewers therefore recommended that the exemptions to impartial hiring provided for in 33 PNC 202 be legislatively restricted.

PSS Rules and Regulations set out the procedures for recruitment and promotions, including with examination guidelines and limitations on nepotism. There are currently no specific provisions for recruitment to positions vulnerable to corruption in the PSS; however, under the PSS Rules and Regulations, an applicant may be disqualified from eligibility for the Public Service System for reasons of "criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct detrimental to the performance of duties of the position." 33 PNC § 2040 addresses the rule for mandatory retirement, which create an exception for those in employment positions exempted by the Board of National Civil Service or those who receive specific exemptions from the Board.

The Board of National Civil Service is charged with increasing the effectiveness and preparation of employees. There is a general induction program for training employees which includes training on procedures, PSS Rules and Regulations and specific topics in the Public Service Act. Given officials have had specialized training depending on their position or rank; these can be internal or external/off-island trainings. There is a regular rotation policy in the Division of Customs.

33 PNC §§ 408–409 address the compensation system for the Public Service System. The Director of the Bureau of Public Service System assigns salary levels and conducts periodic reviews of these compensation rates and practices. The PSS Rules and Regulations address guidelines for pay levels and compensation adjustment. During the country visit, it was confirmed that in 2015, there was a review of pay scale, which led to an increase.

Part 7 of the PSS Rules and Regulations addresses general provisions for the training of public officials, including the policy for training, types of training, and utilization of external training. Judicial training is provided through the Pacific Judicial Council, via the 9th Circuit of the USA, and may receive additional training from external sources, such as the Judicial College in Nevada, Judiciary of Guam and the Pacific Judicial Development Programme. During the country visit, it was additionally provided that the Office of the Special Prosecutor and Office of the Public Auditor conduct awareness trainings on corruption risks.

During the country visit, it was provided that induction programmes for the public service include the Code of Conduct and sessions are conducted by the Public Auditor, Special Prosecutor and Ethics Commission. There is also an induction programme provided to "leaders".

(c) Successes and good practices

There is a regular rotation policy in the Division of Customs, which is only Department to have this.

Paragraph 2 of article 7

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has partially implemented the provision under review.

Article VIII Constitution of the Republic of Palau

The Executive

Section 3. Any citizen of Palau who is not less than thirty-five (35) years of age and has been a resident of Palau for the five (5) years immediately preceding the election shall be eligible to hold the office of President or Vice President.

Section 9. The President or Vice President may be impeached and removed from office for treason, bribery, or other serious crimes by a vote of not less than two-thirds (2/3) of the members of each house of the Olbiil Era Kelulau.

Section 10. The President or Vice President may be removed from office by a recall. A recall is initiated by a resolution adopted by not less than two-thirds (2/3) of the members of the state legislatures in not less than three-fourths (3/4) of the states. Upon receipt by the presiding officers of the Olbiil Era Kelulau of the required number of certified resolutions, the Olbiil Era Kelulau shall establish a special election board to supervise a nationwide recall referendum to be held not less than thirty (30) days nor more than sixty (60) days, after receipt of the required number of certified resolutions.

ARTICLE IX- The Legislative

The OLBIIIL ERA KELULAU

Section 1. The legislative power of Palau shall be vested in the Olbiil Era Kelulau which shall consist of two houses, the House of Delegates and the Senate.

Section 6. To be eligible to hold office in the Olbiil Era Kelulau, a person must be:

- 1) a citizen;
- 2) not less than twenty-five (25) years of age;
- 3) a resident of Palau for not less than five (5) years immediately preceding the election; and
- 4) a resident of the district in which he wishes to run for office for not less than one (1) year immediately preceding the election.

Section 10. Each house of the Olbiil Era Kelulau shall be the sole judge of the election and qualifications of its members, may discipline a member, and, by a vote of not less than two-thirds (2/3) of its members may suspend or expel a member. A member may not hold any other public office or public employment while a member of the Olbiil Era Kelulau.

Section 17. The people may recall a member of the Olbiil Era Kelulau from office. A recall is initiated by a petition which shall name the member sought to be recalled, state the grounds for recall, and be signed by not less than twenty-five percent (25%) of the number of persons who voted in the most recent election for that member of the Olbiil Era Kelulau. A special recall election shall be held not later than sixty (60) calendar days after the filing of the recall petition. A member of the Olbiil Era Kelulau shall be removed from office only with the approval of a majority of the persons voting in the election, and such vacancy shall be filled by a special election to be held in accordance with law. A recall may be sought against an individual member of the Olbiil Era Kelulau no more than once per term. No recall shall be permitted against a member who is serving the first year of his first term in the Olbiil Era Kelulau.

Conflict of Interest/ Financial Disclosure Legislation for Elected Officials under the Code of Ethics

Act 33 PNC

33 PNC § 601 (o) defines the term “Public official” as “ any national elected official, any minister, any director of a bureau or chief of a division of the national government, any state chief executive officer, any member of a state legislature, any member of a national or state board, commission or authority, and any procurement officer or other employee responsible for the award of contracts on behalf of the Republic, or any of its separate branches or subdivisions, or on behalf of any state, or any of its separate branches or subdivisions”.

33 PNC § 605. Disclosure of financial interests.

(a) For the purpose of this section, the term “reporting period” refers to the preceding calendar year with respect to annual statements filed by public officials, and the preceding twelve-month period with respect to assuming office and leaving office statements filed by public officials and statements filed by candidates.

(b) No later than February 1 of each year, within 30 days of assuming office and within 30 days of leaving office, all public officials shall file with the Commission financial disclosure statements for the reporting

period disclosing their financial interests. All candidates shall file the required statements no later than 60 days prior to the date of the election for state or national offices.

(c) Financial disclosure statements required by this section shall state for the reporting period:

(1) The name and mailing address of each source and amount of income, including compensation and gifts from persons other than the public official's or candidate's spouse or children, totalling \$500 or more, received by or promised to the public official or candidate, provided that contributions, and salary and benefits from the national or any state government, need not be reported under this subsection.

(2) The mailing address of every business entity incorporated, regulated, or licensed to conduct business in the Republic, and every business entity which plans to do business in the Republic or has done business in the Republic during the two years prior to the time the statement is required to be filed, in which the public official or candidate had a direct or indirect ownership interest having a fair market value of \$500 or more, and the amount of that interest.

(3) Every business entity in which the public official or candidate was an officer, director, partner, trustee, employee or held a position of management.

(4) The name of each creditor to whom the value of \$1,000 or more was owed at any time during the reporting period and the original amount and amount outstanding; provided that debts arising out of retail installment transactions for the purchase of consumer goods need not be disclosed.

(5) The location and the value of any real property in the Republic in which the public official or candidate held a direct or indirect ownership interest having a fair market value of \$1,000 or more, and, if the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration.

(6) For annual, assuming office and leaving office statements, the names of all persons who made contributions totaling \$100 or more to the public official during the preceding four years.

33 PNC § 611. Penalties.

(a) Criminal penalties. Any person who knowingly or willfully violates any provision of this chapter is guilty of a misdemeanor. In addition to other penalties provided by law, a fine of up to \$10,000 shall be imposed for each violation. For violations of the reporting requirements, a fine of up to three times the amount the person failed to report properly may be imposed for conviction of each violation. Prosecution under this subsection must be commenced within four years after the date on which the violation occurred, or in the case of a public official, four years after the public official leaves Government service. Prosecution under this section may be undertaken by the Attorney General or Special Prosecutor.

(b) Civil penalties. Any person who intentionally or negligently violates any provision of this chapter shall be liable in a civil action brought by the Commission, Attorney General, the Special Prosecutor or a citizen of the Republic for an amount not more than \$10,000 or, in the case of a violation of the reporting provisions of this chapter, an amount not more than the amount or value not properly reported or \$10,000, whichever is greater. If a judgment is entered against the defendant in an action brought by a citizen of the Republic, the plaintiff shall receive 50% of the amount recovered, and shall be entitled to recover from the defendant his costs of litigation, including reasonable attorneys' fees. Before a citizen may bring an action pursuant to this section, the citizen must submit a written request to the Commission, Attorney General and Special Prosecutor asking that they bring a civil action and a written statement setting [forth] the specific facts upon which the citizen bases his or her allegation. If the Commission, Attorney General and Special Prosecutor fail to bring a civil action within 60 days after receipt of General and Special Prosecutor fail to bring a civil action within 60 days after receipt of the written request, or bring an action that is later dismissed without prejudice to the filing of another action, the citizen may thereafter bring a civil action pursuant to this section. An action under this subsection must be commenced within four years after the date on which the violation occurred.

(c) Any public official or candidate who fails to timely file any statement required by this chapter shall pay to the Commission a penalty of \$50 per day for each day that the disclosure is delinquent. All funds received by the Commission shall be deposited in the national treasury.

(d) If two or more persons are responsible for any violation, they shall be jointly and severally liable.

33 PNC § 612. Injunction.

(a) The Commission, Attorney General, Special Prosecutor or any citizen of the Republic of Palau may sue for injunctive relief to enjoin violations of, or to compel compliance with, the provisions of this chapter.

(b) Upon a preliminary showing in an action brought by the Commission, the Attorney General, the Special Prosecutor or a citizen that a violation of section 602, 604 or 607(g) has occurred, the court shall restrain the execution of any official action in relation to which such violation occurred, pending final adjudication. If the court ultimately determines that a violation of section 602, 604 or 607(g) has occurred and that there is a substantial likelihood that the official action would not otherwise have been taken or approved, the court shall set the official action aside as void. The court may, in its discretion, choose not to grant relief otherwise required by this subsection if it determines that to do so would work a severe hardship on the public or innocent persons relying on the official action.

(c) A citizen of the Republic who prevails in obtaining relief under this section shall be entitled to his costs of litigation, including reasonable attorneys' fees.

In relation to 33 PNC § 605(5), only real property 'in the Republic' is covered. During discussions, stakeholders were of the view that a recommendation might be required – to delete 'in the Republic' and to include cash and other assets (e.g. shares, bonds) to be disclosed.

(b) Observations on the implementation of the article

Article VIII of the Constitution provides criteria for the eligibility of a candidate for the office of President and Vice President. Article IX provides the criteria for the eligibility of a candidate to hold office in the Olbiil Era Kelulau. Each house of the Olbiil Era Kelulau is the judge of elections for office within the Olbiil Era Kelulau.

The Constitution (Article VIII, Section 9) allows for the President and Vice President to be impeached and removed from office for treason, bribery, or other serious crimes, but there are no criteria to prevent persons with a criminal record for specific corruption offences (such as bribery) from being eligible to hold the office of the President or Vice President or being eligible for the OEK.

The Palau National Code provides regulations for candidature for public office, which includes financial disclosures. While public official, as defined in 33 PNC § 601 (o), does not include a candidate, 33 PNC § 605 (a) on the disclosure of financial interests specifically includes "statements filed by candidates". According to sub-section (b), "All candidates shall file the required statements no later than 60 days prior to the date of the election for state or national offices". Financial disclosures currently only cover real property "in the Republic". It was noted by the reviewers that this should be expanded and were in agreement with the stakeholders' views above. Section 611 provides criminal and civil penalties for violations, but the maximum that a person can be held criminally liable for is a misdemeanor.

The reviewers recommended that Palau consider strengthening existing legislative and administrative measures to prescribe criteria concerning candidature for and election to public office.

Paragraph 3 of article 7

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has partially implemented the provision under review.

The Republic currently has no political parties. It is a de facto non-partisan democracy since no law prevents the formation of political parties. The Progressive and Liberal Parties used to exist, but no longer.

Hence, the legislative provisions in meeting the requirements of this article under review apply only to candidates for nomination or election to National and State Elective Office and they are as follows:

Code of Ethics Act, 33 PNC § 601.

Definitions.

33 PNC § 601 (b) “Candidate” means any individual who has filed nomination papers with the Election Commission or who has received a contribution or made an expenditure for nomination or election to any national or state elective office. An elected officer is deemed to be a candidate until he files a statement with the Ethics Commission stating that he does not intend to seek re-election to the office he currently holds or to seek election to any other office, and that he will not accept any further contributions or make any further expenditures of contributions after the filing of the statement.

33 PNC § 601 (e) “Contribution” means a payment, forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, whenever made, except to the extent that full and adequate consideration is received, unless it is clear from surrounding circumstances that it is not made for political purposes. An expenditure made at the behest of, or in coordination, cooperation or consultation with, the candidate is a contribution to the candidate unless full and adequate consideration is received for making the expenditure. A contribution to a committee or other entity is a contribution to the candidate if the candidate has a significant influence on the actions or decisions of the committee or entity and the committee or entity makes an expenditure on behalf of the candidate. The term “contribution” does not include volunteer personal services. The term “contribution” does not include informational materials such as books or pamphlets, contributions that are not used and, within 72 hours of receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes, or any devise or personal inheritance.

Campaign statements.

33 PNC § 606. (a) For each election at which a candidate is seeking elective office, the candidate shall file with the Commission a pre-election campaign statement which shall cover the period beginning with the date the candidate received his first contribution for the election and ending 30 days before the election and shall be filed no later than 20 days before the election.

(b) Each candidate who receives from a single source contributions totaling five hundred dollars (\$500) or more after the closing date of the pre-election campaign statement and before the election shall file a late contribution statement disclosing the total amount of such contributions, the name and address of the contributor, the amount of the contribution and the date of the contribution. The statement shall be delivered to the Commission for filing by personal delivery or facsimile transmission no later than forty eight (48) hours after the contribution is made. A late monetary contribution need not be reported nor shall it be deemed to be accepted if it is not cashed, negotiated and deposited and is returned within forty eight (48) hours of its receipt, and a late non-monetary contribution need not be reported and shall not be deemed to be accepted if it is not used in any way and is returned to the contributor within forty eight (48) hours of its receipt.

(c) For each election at which a candidate is seeking elective office, the candidate shall file with the Commission a post-election campaign statement which shall cover the entire period during which the candidate received contributions in connection with that election. The post-election campaign statement shall be filed no later than one hundred twenty (120) days after the election.

(d) Each pre-election and post-election campaign statement required by this chapter shall contain all of the following information:

(1) The total amount of contributions received and expenditures made during the period covered by the campaign statement;

(2) If the cumulative amount of contributions (including loans) received from a person is \$100 or more, the person’s name and address, and the date and amount of each contribution received from that person during the period covered by the campaign statement;

(3) For each person to whom an expenditure of \$500 or more has been made during the period covered by the campaign statement, the person’s name and address, the amount of each expenditure and a brief description of the consideration for which each expenditure was made;

(4) A verification by the candidate, executed under penalty of perjury, that he has used all reasonable diligence in the preparation of the statement and that to the best of his knowledge the statement is true and correct; and

(5) Any other information that the Commission may reasonably deem necessary to fulfill the purposes of this chapter or to more fully inform citizens regarding the financing of campaigns in the Republic.

(e) A monetary contribution need not be reported and shall not be deemed to be accepted if it is not cashed, negotiated or deposited and is returned to the contributor within 72 hours of its receipt, and a non-monetary contribution need not be reported and shall not be deemed to be accepted if it is not used in any way and is returned to the contributor within 72 hours of its receipt.

(f) Any statement filed pursuant to this section may be amended at any time. Amending an incorrect or incomplete statement may be considered as evidence of good faith.

33 PNC § 607. Acceptance and use of contributions.

(a) It shall be unlawful for a foreign national directly or through any other person to make any contribution in connection with an election to any national or state elective office, or in connection with any convention or caucus to select candidates for any national or state elective office or in support of or in opposition to any national or state ballot measure; or for any person, including any candidate, to solicit, accept, or receive any such contribution from a foreign national.

(b) No contribution of two hundred fifty dollars (\$250) or more may be made unless by check or money order, drawn on a bank located in the Republic, containing the name of the contributor and the name of the payee. No expenditure of two hundred fifty dollars (\$250) or more may be made in cash.

(c) No contribution may be made, directly or indirectly, by any person in a name other than the name by which the person is identified for legal purposes.

(d) Unless returned to the contributor, all monetary contributions shall be deposited into a single account in a bank located in the Republic within seventy two (72) hours of their receipt, and all expenditures of two hundred fifty dollars (\$250) or more shall be made by way of a check drawn on this account. The candidate shall inform the Commission of the name of the bank and the account number within five business days of establishing the account.

(e) A candidate may expend contributions only for purposes reasonably related to the election of that candidate to the office sought by the candidate.

(f) No employee may, as a candidate or on behalf of any other candidate, solicit, accept, or receive, directly or indirectly, any contribution, under circumstances in which a reasonable person, in the position of the employee, would believe that the contribution is intended to influence the employee in the performance of the employee's official duties or is intended as a reward for any official action on the employee's part.

(g) No employee or candidate may use, or promise, threaten or attempt to use, any actual or anticipated government authority to assist or obstruct any individual in obtaining any employment, nomination, confirmation, promotion, or change in compensation or employment, in exchange for the individual agreeing to vote or contribute to, or to withhold his vote for or contribution to, any candidate.

(h) No candidate for the office of the President or Vice President of the Republic may, directly or indirectly, solicit a contribution from any employee of the executive branch of the national government with knowledge that the person from whom the contribution is solicited is an employee of the executive branch of the national government. No candidate for the Olbiil Era Kelulau may, directly or indirectly, solicit a contribution from any employee of the Olbiil Era Kelulau with knowledge that the person from whom the contribution is solicited is an employee of Olbiil Era Kelulau. No candidate for the chief executive office of any state may, directly or indirectly, solicit a contribution from any employee of the executive branch of that state with knowledge that the person from whom the contribution is solicited is an employee of the executive branch of that state. No candidate for any state legislature may, directly or indirectly, solicit a contribution from any employee of that state legislature with knowledge that the person from whom the contribution is solicited is an employee of that state legislature. This subsection shall not prohibit a candidate from requesting contributions from an employee if the solicitation is part of a solicitation made to a significant segment of the public which may include employees.

33 PNC § 609. Duties of the Public Auditor.

The Public Auditor shall conduct mandatory audits of campaign statements filed by candidates for the Office of President and Vice President of the Republic and shall conduct random audits of other statements filed under this chapter for the purpose of encouraging compliance with and detecting violations of this chapter. The Public Auditor shall conduct an audit of any statement filed under this chapter if requested to do so by the Commission, Attorney General or Special Prosecutor. The Public Auditor shall annually prepare and transmit to the Commission, Attorney General and Special Prosecutor a report containing the findings of the Public Auditor with respect to the accuracy and completeness of each report and statement reviewed and his findings with respect to any statement or report that should have been but was not filed.

33 PNC § 610. Record keeping.

It shall be the duty of each public official and candidate to maintain such detailed accounts, records, bills and receipts as are necessary to prepare financial and campaign statements and comply with the provisions of this chapter. These records shall be retained for a period of four (4) years from the filing date of the statement to which they relate.

33 PNC § 613. Public records.

Every report and statement filed pursuant to this chapter is a public record open for public inspection and reproduction during regular business hours of the Commission, commencing as soon as practicable, but in any event not later than three (3) business days after the day on which it was received. No conditions shall be imposed upon persons wishing to inspect reports and statements filed under this chapter. Copies shall be provided at a charge of twenty cents (\$.20) per page.

33 PNC § 611. Penalties.

(a) Criminal penalties. Any person who knowingly or willfully violates any provision of this chapter is guilty of a misdemeanor. In addition to other penalties provided by law, a fine of up to ten thousand dollars (\$10,000) shall be imposed for each violation. For violations of the reporting requirements, a fine of up to three (3) times the amount the person failed to report properly may be imposed for conviction of each violation. Prosecution under this subsection must be commenced within four (4) years after the date on which the violation occurred, or in the case of a public official, four (4) years after the public official leaves government service. Prosecution under this section may be undertaken by the Attorney General or Special Prosecutor.

(b) Civil penalties. Any person who intentionally or negligently violates any provision of this chapter shall be liable in a civil action brought by the Commission, Attorney General, the Special Prosecutor or a citizen of the Republic for an amount not more than ten thousand dollars (\$10,000) or, in the case of a violation of the reporting provisions of this chapter, an amount not more than the amount or value not properly reported or ten thousand dollars (\$10,000), whichever is greater. If a judgment is entered against the defendant in an action brought by a citizen of the Republic, the plaintiff shall receive fifty percent (50%) of the amount recovered, and shall be entitled to recover from the defendant his costs of litigation, including reasonable attorneys' fees. Before a citizen may bring an action pursuant to this section, the citizen must submit a written request to the Commission, Attorney General and Special Prosecutor asking that they bring a civil action and a written statement setting [forth] the specific facts upon which the citizen bases his or her allegation. If the Commission, Attorney General and Special Prosecutor fail to bring a civil action within sixty (60) days after receipt of the written request, or bring an action that is later dismissed without prejudice to the filing of another action, the citizen may thereafter bring a civil action pursuant to this section. An action under this subsection must be commenced within four (4) years after the date on which the violation occurred.

(c) Any public official or candidate who fails to timely file any statement required by this chapter shall pay to the Commission a penalty of fifty dollars (\$50) per day for each day that the disclosure is delinquent. All funds received by the Commission shall be deposited in the national treasury.

(d) If two or more persons are responsible for any violation, they shall be jointly and severally liable.

In relation to section 11 of the Ethics Act, Public Auditor's Office has never conducted the mandatory audits of campaign statements. However, if the Ethics Commission, Attorney-General or Special Prosecutor would

request such an audit to be conducted, then the Public Auditor's Office would address this (section 609); no such request has been made, to date.

The Election Commission gives the Ethics Commission a list of registered campaigners to compare who should be providing campaign statements. It was further provided that 33 PNC § 613 has been used to date by the public to obtain information. The Election Commission also has a public outreach programme on how to vote and to increase registration, as it is not mandatory in Palau.

(b) Observations on the implementation of the article

As noted above, Palau is a de facto non-partisan democracy and currently has no political parties. Therefore, legislative provisions address only candidate funding and not the funding of political parties. The Code of Ethics Act (33 PNC § 601) contains the provisions for regulating funding for candidacies. Under § 601, "candidate" includes an individual who has filed nomination papers or received a contribution or made an expenditure for nomination or election and an elected official who has not filed a statement stating they do not intend to seek re-election or election to another office. Under § 606, candidates receiving single source contributions of \$500 or greater after the closing date of the pre-election campaign statement and before the election must file a late contribution statement. Pre- and post- election campaign statements filed with the Election Commission must include the total amount of contributions received and expenditures made, amongst other requirements delineated in the Act. Foreign nationals are prohibited from directly or indirectly contributing to the funding of a candidate. The Act also contains provisions regarding when cash, checks, and money orders may be used, the maintenance of campaign bank accounts, how a candidate may spend funds, and the solicitation of funds. The use of promises or threats to obtain contributions is also prohibited. This Act also addresses the solicitation of contributions for Presidential, Vice Presidential, and Legislative (both national and state) candidates from members within their respective branches of government. The Public Auditor must audit campaign statements filed by candidates for the Office of President and Vice President and conducts random audits of other statements; however, the Public Auditor's Office has never conducted these mandatory audits. All reports and statements filed pursuant to this chapter of the Code of Ethics Act are public records available for public inspection, and this provision has been used to access information. The Election Commission has a public outreach programme on how to vote and to increase registration.

During the country visit, the reviewers were informed that while 33 PNC § 613 on public records were open for public inspection and reproduction during regular business hours of the Commission, in practice, individuals seeking those records needed to produce identification, which was recorded in writing. The Ethics Commission also indicated that, in practice, 'contribution' included monetary, non-monetary and in-kind contributions, which is not provided for in the legislation. The reviewers therefore recommended that the Republic extend the definition of 'contribution' (33 PNC § 601 (e)) to include monetary, non-monetary and in-kind contributions.

(c) Successes and good practices

33 PNC § 613 on public records was deemed a good practice by the reviewers, whereby every report and statement filed pursuant to this chapter is a public record open for public inspection and reproduction during regular business hours of the Commission. Moreover, no conditions can be imposed upon persons wishing to inspect reports and statements filed under this chapter.

Paragraph 4 of article 7

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavor to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has implemented the provision under review.

Transparency and conflict of interest measures have been put in place, as provided for under the Code of Ethics Act 33 PNC- section 604 (titled "Conflict Of Interest"), section 605 (titled "Disclosure of Financial Interest"),

section 606 (mandatory requirement of election candidates to submit campaign statements) and section 607 (prohibition against election candidate to receive, solicit or accept contribution), as described and reproduced above.

Conflict of interest standards in the Public Service System include the following:

33 PNC § 604. Conflict of interest.

(a) No employee may take, participate in taking or use his or her government position to attempt to influence any official action where it is reasonably foreseeable that the action could have a material financial effect on that employee, or on any financial interest of that employee, that is different from the effect on the public generally. An employee who is unable to disqualify himself on any matter because he is the only person authorized by law to perform the official action will not be in violation of this subsection if he has complied with the disclosure requirements in section 605.

(b) No employee may acquire a financial interest in any business or other undertaking which he has reason to believe may be directly affected by official actions to be taken by him.

(c) No employee may assist any person for compensation or act in a representative capacity before any national or state government agency in any matter that relates in any way to the governmental duties of the employee.

(d) No employee may use or attempt to use the employee's official position to secure or grant privileges, exemptions, advantages, contracts, or treatment, for himself or others, including but not limited to the following:

(1) Seeking other employment or contracts for services for the employee by the use or attempted use of the employee's office or position; and

(2) Soliciting, receiving or accepting compensation or other consideration for the performance of the employee's official duties or responsibilities except as provided by law;

(3) Soliciting, receiving or accepting any gift or other item of monetary value from any person seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or from any person whose interests may be substantially affected by the performance or nonperformance of the employee's duties; provided that this subdivision shall not apply to wedding gifts, customary gifts and gifts exchanged between individuals on birthdays, holidays and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value.

(e) No employee may engage in any outside employment or other outside activity that is incompatible with the full and proper discharge of the employee's office or position. The Ethics Commission shall, for each government agency, designate those outside activities that are deemed to be incompatible with the duties of the employees of that agency.

- **Mandatory periodical reporting of financial interest to the Ethics Commission under Code of Ethics Act, 33 PNC Section 605:**

(a) For the purpose of this section, the term "reporting period" refers to the preceding calendar year with respect to annual statements filed by public officials, and the preceding twelve-month period with respect to assuming office and leaving office statements filed by public officials and statements filed by candidates.

(b) No later than February 1 of each year, within 30 days of assuming office and within 30 days of leaving office, all public officials **shall file** with the Commission financial disclosure statements for the reporting period disclosing their financial interests. All candidates shall file the required statements no later than 60 days prior to the date of the election for state or national offices.

- **Prohibitions of nepotism** in cases of direct supervisory/subordinate relationship – Part 5.7 Public Service System Rules & Regulations.
- **Prohibitions of outside employment and other activities** under Part 6.1 of the Public Service System Rules & Regulations.
- Making financial disclosure reports and campaign statements **as public records accessible to members of the public under the Code of Ethics Act 33 PNC Section 613.**
- Making non-compliance of provisions of Code of Ethics both **criminally and civilly liable penalties under the Code of Ethics Act 33 PNC Section 661.**

(b) Observations on the implementation of the article

As noted above, the Code of Ethics Act contains transparency and conflict of interest measures. Transparency measures include section 605 on financial disclosures and section 606 on mandatory campaign statements. Section 604 addresses conflicts of interest, including things such as undue influence, financial interests, solicitations, gifts and outside employment. Section 605 also requires the reporting of financial interests to the Ethics Commission. The Public Auditor can conduct audits on these financial disclosures. Misconduct in public office is criminalized as a misdemeanor.

Some departments, such as the Public Auditor's Office, have their own Code of Ethics.

It was confirmed during the country visit that there is no record of employees' outside employment or activities. There is currently no list of what outside employment or other outside activities employees are engaged in (see: 33 PNC § 604(e)). However, approval for outside employment or activities is approved on a case-by-case basis by each government agency. For example, the reviewers were informed by the BPS that the Director's approval is required for outside employment.

(d) Technical assistance needs

Palau indicated that it would benefit from the following technical assistance:

- Technical support to review and update the existing conflict of interest statements;
- Other: awareness-raising of UNCAC article 7, notably how to declare conflicts of interest;
- Other: Training on corruption for the private sector including conflicts of interest and specific training for Board Members.

Such support has not been provided to date.

Article 8. Codes of conduct for public officials

Paragraph 1 of article 8

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has implemented the provision under review.

The legislative measures in meeting the requirements of this article under review are provided for under the Public Service System Rules & Regulations, which places a high premium on integrity, honesty and responsibility expected/demanded from every public official throughout his/her service with the National Civil Service System of Palau.

Code of Conduct

Part 11 of the Public Service System Rules & Regulations covers actions of dismissal, demotion and suspensions of employees who are found to have violated Part 11.4

- (a) Fraud in securing appointment;
- (b) Inexcusable neglect of duty;
- (c) Insubordination;
- (d) Dishonesty
- (e) Drinking or drunkard on duty;
- (f) Intemperance;
- (g) Addiction to the use of narcotics or habit-forming drugs, when such use is detrimental to an employee's job performance;
- (h) Inexcusable absence without leave;

- (i) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offence involving moral turpitude is deemed to be a conviction within the meaning of this Part;
- (j) Discourteous treatment of the public or other employees;
- (k) Misuse of government property;
- (l) Violation of Board or Bureau of Public Service System rules and regulations;
- (m) Refusal to take and subscribe to an oath or affirmation which is required by law in connection with his employment;
- (n) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to his agency or his employment;
- (o) Use of official position or governmental property for private gain or profit;
- (p) The prohibited activities set forth in Part 6.1 and 6.2 (Outside employment and other activities) of these regulations.

Incentive Awards Programme

Part 10 of the Public Service System Rules & Regulations provides for an incentive awards programme aimed, though not directly but indirectly, at recognizing employees for their integrity, honesty and responsibility shown during his tenure of service. The program is performance-based and designed to

- (a) To encourage employees to participate in improving the efficiency and economy of government operations;
- (b) To recognise and reward employees for their suggestions, superior accomplishments or other personal efforts which contribute to efficiency, economy or other improvements in government operations;
- (c) To recognise and reward employees who perform special acts or services in the public interest in connection with, or related, their employment.

No general oath is required of public officials, but there are oaths for specific sectors do e.g. law enforcement, customs, for the Office of the Special Prosecutor, for Delegates ad Senators (see UNCAC article 8(2)).

Palau has 33 PNC 602-607 that cover public employee conduct, campaign finance, and financial disclosures for public officials in order to determine conflict of interests. However, the penalty for violating any of these provisions is only a misdemeanor and a \$10,000.00 fine.

Misconduct in Public Office covers illegal acts committed using one's public office, or willful neglect to perform the duties of the public office. Illegal act has been defined in *Uehara v. ROP 17 ROP 167 (2010)* as “contrary to or violating a law or rule or regulation or something else . . . having the force of law.”

(b) Observations on the implementation of the article

As noted above, Palau has legislative measures in place to address integrity, honesty and responsibility among its public officials. The PSS Rules & Regulations described above expect integrity, honesty and responsibility from all public officials. Part 11 of the Rules & Regulations addresses dismissals, demotions, and suspensions for violations. Violations include things such as dishonesty, inexcusable neglect of duty, misuse of government property, and misbehavior discrediting one's agency or employment, among others. Part 10 of the Rules & Regulations addresses Palau's Incentive Awards Programme, which indirectly recognizes employees for their integrity, honesty and responsibility throughout their service. In Palau, misconduct in public office, defined as illegal acts committed using one's public office or neglect to perform the duties of the public office, is criminalized as a misdemeanor.

(c) Successes and good practices

The reviewers highlighted Palau's Incentive Awards Programme for public officials (Part 10 of the Rules & Regulations) as a good practice.

Paragraph 2 and 3 of article 8

2. In particular, each State Party shall endeavor to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honorable and proper performance of public functions.
3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has partially implemented the provision under review.

Coverage of Code of Ethics Act 33 PNC and the Public Service System Rules and Regulations:

- (a) “Candidate” means any individual who has filed nomination papers with the Election Commission or who has received a contribution or made an expenditure for nomination or election to any national or state elective office. An elected officer is deemed to be a candidate until he files a statement with the Ethics Commission stating that he does not intend to seek re-election to the office he currently holds or to seek election to any other office, and that he will not accept any further contributions or make any further expenditures of contributions after the filing of the statement.
- (b) “Employee” means any nominated, appointed, or elected officer or employee of any state government or the national government. “Former employee” means a person who has been an employee within the preceding two years.
- (c) “Public official” means any national elected official, any minister, any director of a bureau or chief of a division of the national government, any state chief executive officer, any member of a state legislature, any member of a national or state board, commission or authority, and any procurement officer or other employee responsible for the award of contracts on behalf of the Republic, or any of its separate branches or subdivisions, or on behalf of any state, or any of its separate branches or subdivisions.

Exempted employees and positions under Code of Ethics Act 33 PNC § 205 and Part 1.3 of the PSS Rules & Regulations:

- (a) The National Public Service System shall apply to all employees and positions in the national government now existing or hereafter established and all personal service performed for the national government **except the following**, unless this division is specifically made applicable to them:
 - (1) **persons or organizations retained by contract** where the Director of the Bureau of Public Service System has certified that the service to be performed is special or unique and nonpermanent, is essential to the public interest and that, because of the degree of expertise or special knowledge required and the nature of the services to be performed, it would not be practical to obtain personnel to perform such service through normal public service recruitment procedures.
 - (2) **positions of a temporary nature** needed in the public interest where certified by the Director of the Bureau of Public Service System and when the need for the same does not exceed ninety (90) days; provided that in the event of a major disaster declared by the President, the Director may extend such ninety (90) day period for a maximum of an additional one hundred eighty (180) days for positions engaged in relief, repair or rehabilitation as a result of such disaster.
 - (3) members of any board, public corporation, commission or other agency, or appointed public officials **whose appointments are made by the President** with the advice and consent of the Senate.
 - (4) elected officials and members of the **Council of Chiefs**.
 - (5) persons appointed by the President or Vice President pursuant to section 6, Public Law No. 7-8-8 to fill the following positions: **chief of staff, special advisors and assistants**.
 - (6) the **employees of the Olbiil Era Kelulau**.
[Cross referencing Part 1.3 subpara (f) of the PSS Rules & Regulations- Employees of OEK includes The Chief Clerks, Legislative Counsels, Budget Officer, Administrative Officer, and other employees of the OEK]
 - (7) personnel presently under contract of employment not included in paragraph (1) of this subsection during the life of such contract. No contract of employment shall be entered into, renewed, or amended after the effective date of this division, except subject to the provisions hereof.
[Cross-referencing Part 1.3 subpara (h) of the PSS Rules & Regulations- “personnel presently under contract of employment not included in paragraph (a) of this subsection during the life of such contract. No

contract of employment shall be entered into, renewed, or amended after the effective date of this division, except subject to the provisions hereof.”]

- (8) persons who are appointed to serve occasionally as classroom teachers when regular classroom teachers are absent from work during any one school year.
- (9) any position involving intermittent performance which does not require more than forty (40) hours in any one month.
- (10) positions of a part-time nature requiring the services of four hours or less a day but not exceeding one year in duration.
- (11) positions of a temporary nature which involve special projects having specific completion dates which do not exceed one year.
- (12) justices and judges.
- (13) the employees of the National Aviation Administration;
- (14) positions specifically exempted by any other law of the Republic.
- (15) Tax auditors hired by the Ministry of Administration after October 1, 1999.

As provided for above, there are 15 categories of exempted employees and positions under Code of Ethics Act (33 PNC § 205) and Part 1.3 of the PSS Rules & Regulations.

The Public Auditor’s Office has its own Code of Ethics, and each employee upon commencing his or her position signs an oath. The OEK have no code of conduct but they do take an oath. There are 15 types of exempted employees (33 PNC § 205), including the President and Vice President.

It was agreed that the definition of ‘public official’ is narrow and could be extended, as recommended in the first UNCAC review cycle by the reviewers.

(b) Observations on the implementation of the article

As noted above, the Code of Ethics Act and the PSS Rules & Regulations are the key standards of conduct for candidates, employees, and public officials, all of which are defined in 33 PNC. Palau has noted that the current definition of “public official” is narrow and could be extended, which the reviewers agreed with and was also noted as a recommendation from the first cycle of the Implementation Review Mechanism. The PSS has 15 categories of exempted employees and positions, including persons or organizations retained by contract for “unique and nonpermanent” employment, temporary positions of less than 90 days, individuals appointed to positions by the President with the advice and consent of the Senate, elected officials and members of the Council of Chiefs, Presidential and Vice Presidential chiefs of staff, special advisors and assistants, employees of the Olbiil Era Kelulau, and justices and judges, among others. Palau currently does not require a general oath of office for public officials, but there are government departments that have their own oath e.g. Special Prosecutor’s Office, the Public Auditor’s Office (also has its own Code of Ethics) and the OEK.

During the country visit, it was provided that the Bureau of Public Safety has an additional Code of Conduct, specific to its operations. Rules and Regulations of the Public Service are general. Specific Departmental Codes of Conduct are in addition to the general Rules and Regulations.

The reviewers recommended that Palau endeavor to review and strengthen the Public Officials Code of Conduct to further the correct, honorable and proper performance of public functions, taking into account international standards and initiatives.

Paragraph 4 of article 8

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has implemented the provision under review.

(b) Observations on the implementation of the article

The Office of the Special Prosecutor is the independent office created under the laws of Palau to investigate and prosecute corrupt and fraudulent Government activity. This Office allows for anonymous reporting, pursuant to section 271 of the OPA. This can be done via the website: <https://www.palauosp.org/report/> or by phone calls, mail, email, personal delivery, and in-person complaints.

Moreover, citizen can report or give information concerning corruption to the Public Auditor, noting that whistleblowers are protected and the Public Auditor is prevented from disclosing the identity of anyone who reports on Government misconduct in relation to public funds without their written consent, pursuant to 40 PNCA 271.

(c) Successes and good practices

The reporting mechanism available to public officials to report acts of corruption, namely to the Office of the Special Prosecutor, through various means is to be commended. The website - <https://www.palauosp.org/report/> - is user-friendly, confidential and allows for anonymous reporting.

Paragraph 5 of article 8

5. Each State Party shall endeavor, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has partially implemented the provision under review.

The Code of Ethics Act 33 PNC governs asset declaration systems. It is mandatory to disclose the **financial interest** acquired by public officials, as well as those of his/her spouse and dependent children. (See responses in UNCAC article 7, paragraphs 2, 3 and 4 above).

The term “financial interest”, as defined in the Code of Ethics Act 33-PNC, includes:

Any business entity in which the employee has a direct or *indirect ownership interest*, provided that interest has a fair market value of \$500 or more;
An employment, or prospective employment for which negotiations have begun;
Any real or personal property in which the employee has a direct or *indirect ownership interest*, including a leasehold interest, having a fair market value of \$1,000 or more.

The term “*indirect ownership interest*” means any interest owned by the spouse or dependent children of the employee or by an agent on behalf of the employee, or the pro rata share of an interest owned by a business entity in which the employee or the employee’s spouse or dependent children cumulatively own a 10 percent or greater interest.

Any source of income, including compensation and gifts, and loans from sources other than commercial lending institutions made in the normal course of business, aggregating \$500 or more in value received by or promised to the employee during the preceding 12 months;

A directorship or officership in a business;

Any source of contributions aggregating \$1,000 or more in value received by or promised to the employee during the preceding 4 years.

Functions of the Ethics Commission and the Public Auditor:

- **Code of Ethics Act, 33 PNC §608.**

Establishment and Functions of the Ethics Commission

- (a) There is established a commission to be known as the Ethics Commission. The Commission shall consist of three (3) members appointed by the President with the advice and consent of the Senate. The term of each member shall be four (4) years. Members of the Commission shall hold no other public office or public employment. The chairman of the Commission shall be elected by a majority of the Commission. Members of the Commission may be removed by the President only for good cause. Vacancies shall be filled for the remainder of any unexpired term in the same manner as the original appointment. Commission members shall be compensated at a rate of thirty-five dollars (\$35) for each meeting the Commission member attends.
- (b) The Commission shall adopt regulations to carry out the purposes of this chapter.
- (c) The Commission shall prescribe and supply the forms for statements and reports required by this chapter.
- (d) The Commission shall determine whether required documents have been filed and, if so, whether they comply on their face with the requirements of this chapter.
- (e) The Commission shall notify promptly all persons who have failed to file a report or statement in the form and at the time required by this chapter.
- (f) The Commission may employ staff, including legal counsel to advise and represent the Commission in actions filed by or against it, and to assist the Commission to issue advisory opinions upon the request of any person governed by this chapter as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the chapter.
- (g) **The Commission shall initiate, receive, and consider charges concerning alleged violations of this chapter, initiate or make investigations, and hold hearings.**
- (h) **The Commission may subpoena witnesses, administer oaths and take testimony relating to matters before the Commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the Commission. Before the Commission may exercise any of the powers authorized herein with respect to any investigation or hearing, it shall, by a vote of a majority of its members, define the nature and scope of its inquiry.**
- (i) On an affirmative vote of a majority of its members, the Commission shall have authority to bring civil actions on its own behalf, and take other actions consistent with the law to enforce the provisions of this chapter.

- **Code of Ethics Act 33 PNC § 609**

Duties of the Public Auditor.

The Public Auditor shall conduct mandatory audits of campaign statements filed by candidates for the Office of President and Vice President of the Republic and shall conduct random audits of other statements filed under this chapter for the purpose of encouraging compliance with and detecting violations of this chapter. The Public Auditor shall conduct an audit of any statement filed under this chapter if requested to do so by the Commission, Attorney General or Special Prosecutor. The Public Auditor shall annually prepare and transmit to the Commission, Attorney General and Special Prosecutor a report containing the findings of the Public Auditor with respect to the accuracy and completeness of each report and statement reviewed and his findings with respect to any statement or report that should have been but was not filed.

The Public Auditor's Office is not required to abide by the general disclosure forms and it also does not have a specific income and asset declaration system in place.

40 PNC 655 requires that public employees disclose conflicts of interests if they have "ownership, or involvement with any business which has bid on a government procurement actions recommendation, if the employee was involved in the preparation of any part of a program requirement or a purchase order request, or influenced the content of any specification or procurement standard, rendered advice, or participated in any other advisory capacity in any proceeding or application relative to the procurement of goods, services, or construction". This report is made to the Attorney General.

33 PNC 602-607 covers public officials' financial interest reporting, campaign finance reporting, and mandates reporting of any conflict of interest that public employees may have. Failure to make honest disclosures - or not disclosing at all - is a misdemeanor under this section no matter how egregious the violation. Dishonesty in disclosing the required information could be prosecuted under 17 PNC 4203: Unsworn falsification to authorities. However, this is also only a misdemeanor. Unfortunately, the definition of perjury in the new Penal Code is limited to statements made in legal proceedings. Candidates, public employees, and public officials

simply sign a document containing their disclosures, and swear that those disclosures are correct by signing the document.

There is no practical verification process in place in relation to the checking of asset declarations. 33 PNC §608(h) has also not been used in the last 2 years.

(b) Observations on the implementation of the article

As noted above, the Code of Ethics Act governs asset declaration systems. Public officials are required to disclose their own, their spouse's, and their dependents' financial interests only. The definition of financial interest codified in the Code of Ethics Act includes direct or indirect ownership of business entities and real property above the specified threshold values, which means interests owned by spouses, dependent children, or agents of the employee on behalf of the employee must be reported.

There is no verification process in relation to the asset declarations. Section 608 (h) of the Code of Ethics Act allows for the Commission to "subpoena witnesses, administer oaths and take testimony relating to matters before the Commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the Commission". During the country visit, the Commission confirmed that it has not used its powers under section 608(h) in the past few years. Pursuant to section 609, "The Public Auditor shall conduct an audit of any statement filed under this chapter if requested to do so by the Commission, Attorney General or Special Prosecutor". The reviewers were informed that the Public Auditor has not received such a request. It was confirmed during the country visit that there is no verification process in place in relation to fact checking asset declarations.

Under 40 PNC 655, public employees are required to disclose certain conflicts of interest to the Attorney General.

The reviewers recommended that the Republic endeavor to strengthen measures and systems requiring public officials to make declarations to appropriate authorities regarding their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

Paragraph 6 of article 8

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has implemented the provision under review.

The legislative measure in meeting the requirements of the article under review is provided for under Part 11 of the PSS Rules & Regulations, as follows:

Sub-Part 11.5 (a) Suspensions and Temporary Demotion for less than 3 working days.

Sub-Part 11.5 (b) Dismissal and Permanent Demotion.

Sub-Part 11.12 Termination for Cause defined in Sub-Part 11.4 (see responses in UNCAC article 8, para 1 above).

The process taken before adverse action includes, as follows:

Preparation of Written Notice under Sub-Part 11.6 by the appropriate management official.

The Contents of Written Notice:

(a) The name, address, employing department and position title of the employee

(b) The reasons supporting the action, specifically, and in detail, including names, times and places.

- (c) The letter must inform the employee that he is entitled to review all the materials relied on by the management official to support the reasons specified in the letter, including material relevant to the employee's past record if the record forms part of the basis for the action.
- (d) When applicable the notice must inform regular employees of their right to a hearing and right to appeal to the Board and the Trial Division of the Supreme Court pursuant to 33 PNC 426 and Part 12 of these regulations

Delivery of Written Notice (Sub-Part 11.8): A written notice of adverse action to the employee shall preferably be delivered to him personally and acknowledged receipt by him by his signature and date entered at the end of the last page of the written notice. Alternatively, delivery may be effected by certified or registered mail (Sub-Part 11.8 (a))

Separation during initial probationary period under Sub-Part 11.10 for new appointee who lacks the ability, attitude or desire to become an efficient and productive employee.

Initiation of action (Sub-Part 11.11) – The management official may suspend an employee immediately pending investigation or hearing of any charge against him.

(b) Observations on the implementation of the article

As noted above, the PSS Rules & Regulations Part 11 contains provisions for the demotion, suspension and dismissal of public employees. The process for taking these actions is also delineated in Part 11. Management officials may suspend an employee immediately pending investigation or hearing of any charge against him.

During the country visit, the reviewers were not provided with the statistics as requested in terms of the number of PSS Code of Conduct violations, but were informed that there were only a few examples of where disciplinary or other measures have been taken against public officials who violate the Code. As this is an optional requirement, it is to be noted that while the UNCAC provision under review may be legislatively provided for, there appears to be room for improvement in terms of its enforcement by relevant authorities.

(c) Technical assistance needs

Palau indicated that it would benefit from the following technical assistance:

- (a) Capacity-building for Board Members of the Ethics Commission e.g. governance procedures, corporate governance principles.

Such support has not been provided to date.

Article 9. Public procurement and management of public finances

Paragraph 1 of article 9

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:
- (a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;
 - (b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;
 - (c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;
 - (d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;
 - (e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such

as declaration of interest in particular public procurements, screening procedures and training requirements.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has partially implemented the provision under review.

The measures required of the article under review are provided for under the Palau Statutory Framework for National Government Procurement –Chapter 6 of Title 40 PNCA (Entitled “Revenue and Taxation”). Among the relevant sections of the law are:

Under 40 PNCA Sec. 606 - “Procurement” means the acquisition by any means, including purchase, lease or rental, of any goods or services. It also includes all functions that pertain to the obtaining of construction, goods or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration. It does not include personal service contracts with individuals who will be employed by Republic officials.

In relation to sub-para (a):

TYPES OF PROCUREMENT AND PROCEDURES

- (A) **Contracts above USD 20,000** – Competitive sealed bids procedures provided for under 40 PNCA sections 615-624 (see below);
- (B) **Small Purchases (procurement not exceeding USD 20,000)** – Procedures provided for under 40 PNCA section 625 (Price quotations from at least three vendors. Purchase Orders);
- (C) **Competitive negotiated contracts** – Procedures provided under 40 PNCA Section 626 (Request for proposals)
- (D) **Sole source (procurement of USD 20,000 or less)**-Provision under 40 PNCA section 627
- (E) **Emergency procurement**- Provisions under 40 PNCA Section 628
- (F) **Professional services** –Provisions under 40 PNCA Section 629
- (G) **Construction services**- Procedures under 40 PNCA Section 642 through 647
- (H) **Architect –engineer and land surveying services**-Provisions under 40 PNCA Section 648

Competitive Sealed Bids procedures are as follows:

40 PNCA § 615. Invitation for bids.

An invitation for bids shall be issued and shall include at a minimum:

- (a) notice that bids are being accepted;
- (b) an invitation for bids number;
- (c) date of issuance;
- (d) name, address, and location of issuing office and location where copies of the invitation for bids and plans may be obtained;
- (e) specific address/location where bids must be submitted;
- (f) date, hour, and place of bid opening;
- (g) a purchase description in adequate detail to permit full and open competition and allow bidders to properly respond;
- (h) quantity of goods or services to be furnished;
- (i) time, place, and method of delivery or performance requirements;
- (j) essential contractual terms and conditions;
- (k) any bonding requirements;
- (l) any local preference evaluation factors; and
- (m) closing date of bids.

40 PNCA § 616. Public notice.

Public notice of the invitation for bids shall be made a reasonable time at least fifteen (15) days prior to the date of the initial day of the bidding time. The notice shall be furnished to all state governments and to all persons who have requested to be included in bidders mailing lists within the previous twelve (12) months; be published in a newspaper of general circulation in the Republic or in a foreign newspaper if the Procurement Officer determines that publication would benefit the government; and shall be publicly posted for at least fifteen (15) days at the office of the Procurement Officer concerned, the post office building, the

Courthouse, the Bureau of Domestic Affairs office, and announced on all radio and television stations within the Republic.

40 PNCA § 617. Bidding time.

A bidding time of at least thirty (30) calendar days shall be provided unless the Procurement Officer makes a written and substantiated determination that a shorter time period is reasonable and necessary. The minimum time period should not be less than fifteen (15) days after the notice of invitation for bids is posted.

40 PNCA § 619. Bid receipt.

Bids, upon receipt at the location specified in the invitation for bids, shall be kept unopened and secured in a locked receptacle. Bids which are opened in a time or in a manner not complying with section 620 herein shall be resealed in the envelope and the person who opened the bid shall write his signature and title on the envelope and deliver it to the Procurement Officer. No information contained in the bid shall be disclosed prior to bid opening.

40 PNCA § 620. Bid opening and recording.

The bid opening shall be conducted by the Procurement Officer [or] his designee. The bids will be opened publicly in the presence of at least two (2) witnesses at the time and place designated in the invitation. The Procurement Officer shall record the amount of each bid together with the name of each bidder and prepare a written summary of the bid opening, to be countersigned by the witnesses. All bids and the summary shall be opened for public inspection.

40 PNCA § 624. Awards.

(a) The contract must be awarded in accordance with this chapter with reasonable promptness, but in no event later than thirty (30) days after opening of the bids, by written notice to the responsible bidder whose bid fully meets the requirements of the invitation for bids and this chapter. Unsuccessful bidders also shall be promptly notified.

(b) Notice of an award shall only be made by the presentation of a contract with all of the required government signatures to the bidder. Government contracts shall contain a clause which states that the signature of the private contractor shall be the last in time to be affixed to a contract and that no contract can be formed prior to the approval of all required government officials. These officials are the Procurement Officer concerned or his designee, the Attorney General or the States Attorney, if any, and the Director of the Bureau of Program, Budget, and Management, or in the case of state government contracts, the Governor or his designee.

(c) In the event all bids exceed available funds and the bid of the lowest responsive and responsible bidder does not exceed those funds by more than five percent (5%), the Procurement Officers may negotiate an adjustment of the bid price including changes in bid requirements with the lowest responsive and responsible bidder in order to bring the bid price within the amount of available funds. The negotiation shall be documented in writing and attached to the bidding documents.

(d) The person responsible for the obligation or expenditure of funds shall accept the lowest responsive bid from the lowest responsive bidder who offers to perform the project according to the set standards at the lowest cost within thirty (30) days following the opening of a bidding; provided, that if a responsible bid in an amount less than one hundred thousand dollars (\$100,000) is submitted by an entity wholly owned by a person or persons of Palauan citizenship is no more than twenty five percent (25%) higher than the lowest responsible bid submitted by an entity not of wholly Palauan ownership, then the bid by wholly Palauan entity shall be accepted; provided further that the National Director of Budget and Finance first certifies on the bid document that sufficient funds are available to meet the bid, and such acceptance shall form a contract.

40 PNCA § 630- Cancellation of invitation for bids or request for proposals

(a) An invitation for bids or request for proposal may be cancelled and any bids or proposals may be rejected when such action is determined in writing by the Procurement Officer concerned to be in the best interest of the government based upon:

- (1) inadequate specifications contained in solicitation; or
- (2) the goods or services being procured are no longer required; or
- (3) a change in specifications; or
- (4) all offers received being at unreasonable prices; or
- (5) bids or proposals received indicating that the needs of the government can be met by a less expensive good or service;
- (6) collusive bids; or

- (7) all bids or proposals exceeding the funds available.
- (b) A written determination of the reasons for the cancellation or rejection will be included in the contract file.

In relation to sub-para (b):

40 PNCA § 631. Responsibility of bidders and offerors.

- (a) Awards shall be made only to **responsible bidders or offerors**. Responsible bidders or offerors shall:
 - (1) have adequate financial resources to perform the contract or the ability to obtain the finances;
 - (2) be able to comply with required delivery or performance schedule;
 - (3) have the necessary organization, experience, and skills required to perform the contract or have ability to obtain them;
 - (4) have the necessary production, construction, and technical equipment facilities or the ability to obtain them; and
 - (5) be qualified and eligible to receive the award under applicable laws and rules.
- (b) Prior to award, the Procurement Officer concerned may obtain information from the bidder or offeror necessary to make a determination of responsibility using the factors in subsection (a) above. A written, detailed, and substantiated determination of responsibility shall be made prior to the award of any contract calling for purchases of goods or services exceeding one hundred thousand dollars (\$100,000). The failure of a bidder or offeror to supply information in connection with an inquiry with respect to responsibility may be grounds for determination of non-responsibility. For the purposes of determining responsibility the Procurement Officer may request inspection of the plant or place of business of the bidder or offeror at a reasonable time, and the Procurement Officer may request the bidder or offeror to submit documents or other records for inspection. Failure to comply promptly with such requests shall be grounds for a determination that the bidder or offeror has failed to meet the standards of responsibility.

40 PNCA § 632. Prequalifications of offerors and bidders.

Prospective suppliers may be prequalified for particular types of supplies, services, and construction. Solicitation of mailing lists of potential contractors shall include but shall not be limited to such prequalified suppliers. Prequalification lists shall be maintained for one (1) year. When a bidder or offeror is disqualified for failure to meet the standards of responsibility, a written determination shall be prepared and placed in the contract file.

40 PNCA § 633. Right to inspect place of business.

All invitations to bid and all requests for proposals shall contain the following clause:

“Bidder or Offeror acknowledges that the submission of a bid or offer provides the Republic of Palau the right to inspect at reasonable times the part of the plant or place of business of a contractor or subcontractor which is related to the performance of any contract awarded by the government. Failure to allow inspection may result in the rejection of the bid or proposal or contract.”

In relation to sub-para (c):

As stipulated under 40 PNCA Section 624 (d), “the person responsible for the obligation or expenditure of funds” shall accept the bid based on the following criteria:-

Availability of funds. (Under Section 624(c) it is provided that “in the event all bids exceed available funds and the bid of the lowest does not exceed those funds by more than 5%, the Procurement Officer may negotiate an adjustment of the bid price... to bring the bid price within the amount of available funds).

Lowest responsible bid. If a responsible bid in an amount less than USD 100,000 is submitted by an entity wholly owned by a person or persons of Palauan citizenship is no more than 25% higher than the lowest bid submitted by an entity not of wholly Palauan ownership

Perform the project according to set standards

Perform within 30 days following opening of bids.

Awards to be made only to **responsible bidders or offers** (cross referencing 40 PNCA Section 631)

In relation to sub-para (d):

40 PNCA § 649. Authority to resolve protested solicitations and award.

- (a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Procurement Officer concerned. The protest shall be

submitted in writing within fourteen (14) days after such aggrieved person knows or should have known of the facts giving rise thereto.

(b) The Procurement Officers shall have the authority, prior to the commencement of an action in the Supreme Court of the Republic concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective concerning the solicitation or award of a contract. The Procurement Officer will acknowledge receipt of protests within five (5) working days after receipt and shall render a final decision within thirty (30) days after receipt of the protest.

(c) If the protest is not resolved by mutual agreement, the Procurement Officer concerned shall promptly issue a decision in writing. This decision shall state in detail the reasons for the actions taken.

(d) A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished immediately to the protestor and any other party intervening within thirty (30) days after receipt of the protest.

(e) A decision under subsection (c) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision seeks review of the decision by the Supreme Court of the Republic within six (6) months after notice of the decision is served.

(f) In the event of a timely protest under subsection (a) of this section the government shall not proceed further with the solicitation or with the award of the contract until the Procurement Officer concerned makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the government.

40 PNCA § 650. Remedies.

(a) If, prior to an award, the Procurement Officer concerned determines that a solicitation or award of contract is in violation of law or these regulations, then the solicitation or proposed award shall be cancelled or be revised to comply with law or regulation.

(b) If after an award, the Procurement Officer concerned determines that a solicitation or proposed award of a contract is in violation of law or regulation, then:

(1) if the person awarded the contract has not acted fraudulently or in bad faith:

(A) the contract may be ratified and affirmed provided it is determined by the Procurement Officer in a detailed and substantiated writing that doing so is in the best interests of the government; or

(B) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit prior to termination.

(2) if the person awarded the contract has acted fraudulently or in bad faith:

(A) the contract shall be declared null and void; or

(B) the contract may be ratified and affirmed if such action is in the best interests of the government without prejudice to the government's rights to such damages as may be appropriate.

40 PNCA § 651. Authority to resolve contract dispute.

(a) This section applies to controversies between the government and a contractor and which arise under, or by virtue of, a contract between them. This includes, without limitation, controversies based upon performance, interpretation, or compensation due under said contract.

(b) The Procurement Officer concerned is authorized to settle and resolve a controversy described in subsection (a) above.

(c) Any dispute must be filed in writing with the Procurement Officer concerned within fourteen (14) calendar days after obtaining knowledge of the facts surrounding the dispute. If such a dispute is not resolved by mutual agreement, the Procurement Officer shall issue a decision in writing within ninety (90) days after receipt of notice of dispute. The decision shall include:

(1) a description of the dispute;

(2) reference to pertinent contract terms;

(3) a statement of factual areas of disagreement or agreement; and

(4) a statement of decision as to the factual areas of disagreement and conclusion of the dispute with any supporting rationale.

(d) A copy of the decision under subsection (c) above shall be mailed or otherwise furnished immediately to the contractor within ninety (90) days after receipt of the notice of dispute.

(e) The decision under subsection (c) of this section shall be final and conclusive unless fraudulent or unless any person adversely affected by the decision seeks review of the decision by the Supreme Court within six (6) months after notice of the decision is served.

- (f) A contractor that has a dispute pending before a Procurement Officer must continue to perform according to the terms of the contract and failure to continue shall be deemed to be material breach of the contract unless the contractor obtains a waiver of this provision from the Procurement Officer.
- (g) If the Procurement Officer does not issue the written decision required under subsection (c) of this section within ninety (90) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

In relation to sub-para (e):

40 PNCA § 653. General standards.

Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust. In order to fulfill this ethical standard, employees must meet the requirements of sections 655 through 660 herein. Any effort to influence any public employee to breach the standards of ethical conduct set forth in these regulations is also a breach of ethical standards.

40 PNCA § 654. Employee conflict of interest.

(a) It is a breach of ethical standards for any employee of a government agency to participate directly or indirectly in a procurement with that government agency if:

- (1) the employee or any member of the employee's immediate family or a dependent of the employee has a financial interest pertaining to the procurement; or
- (2) a business or organization in which the employee, or any member of the employee's immediate family or dependent has a financial interest pertaining to the procurement; or
- (3) any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(b) It is permissible for an employee to have an interest in a procurement with a government agency other than the one at which he is employed provided:

- (1) the employee does not participate directly or indirectly in the procurement nor does he attempt to influence actions relative to the award of the procurement;
- (2) the employee discloses his ownership interest; and
- (3) the procurement is awarded as a result of a competitive sealed bidding or competitive negotiation.

(c) Upon discovery of an actual or potential conflict of interest, an employee shall promptly file with the Procurement Officer concerned a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Public Auditor for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

40 PNCA § 655. Employee disclosure requirements.

An employee shall disclose to the Attorney General or State Attorney, if any, and the Procurement Officer, on forms provided by the Procurement Officer all interests, ownership, or involvement with any business which has bid on a government procurement actions recommendation, if the employee was involved in the preparation of any part of a program requirement or a purchase order request, or influenced the content of any specification or procurement standard, rendered advice, or participated in any other advisory capacity in any proceeding or application relative to the procurement of goods, services, or construction.

40 PNCA § 656. Kickbacks and gratuities.

It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application request for ruling, determination, claim, or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal thereof.

40 PNCA § 657. Contract clauses.

The prohibitions against gratuities and kickbacks shall be conspicuously set forth in every contract and solicitations therefor.

40 PNCA § 658. Restrictions on employment of present and former employees.

(a) It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become an employee of a person contracting with the employee's government agency within a year after the award of the contract or the cancellation of invitation for bids.

(b) It shall be a breach of ethical standards for any former employee knowingly to act as a principal or as an agent for any person, other than the government, in connection with any judicial or other legal proceeding, request for a ruling or other determination, claim, charge, or controversy regarding a procurement action in which the employee participated personally and substantially through decision, approval, disapproval, or recommendation.

(c) It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal or as an agent for anyone other than the government in connection with any judicial or other legal proceedings, or contract claim, or charge or controversy in which the employee either participates personally and substantially through decision approval, disapproval, recommendation[,] the rendering of advice or otherwise.

40 PNCA § 659. Use of confidential information.

It shall be a breach of ethical standards for any employee or former employee to knowingly use confidential information for actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

40 PNCA § 660. Collusion by bidders.

Collusion or secret agreements between bidders for the purpose of securing an advantage to the bidders against the authorizing agent in the awarding of contracts is prohibited. The Procurement Officers may declare the contract void if s/he finds sufficient evidence after a contract has been let that a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the government obtained the contract.

It was confirmed that the Procurement Law is used for any tender over USD20,000. There are 2 methods: invitation for bids; or negotiated contracts. The specifications are in the Law.

In the Government, there are 3 procurement officers: 1) the Director of Public Services for services that need to be procured; 2) the Director of Public Works for capitol improvement projects (incl. construction, architecture, design) that need to be procured and there is a specific section in the Law on this; and 3) the Chief of Property and Supply Division for goods to be procured.

As of February 2019, there were 8 in total who work on procurement in the Property and Supply Division. There is a procurement management system in place; there is a practice of not deleting old files. For goods, some technical Committees are established (when the tender requires expertise) to review proposals according to specifications. The Committees only make recommendations; procurement officers make the ultimate decisions.

In Public Works, in the CIP Division, there were 2 engineers, 1 architect, 3 clerical staff and 9 project inspectors and 1 Assistant Project Manager. Most money comes from the national budget and from receiving grants for major work from Taiwan (annual donor) and the EU (i.e. on climate change), noting that grants have conditions attached but nothing that goes against the Law. It is to be noted that for the Taiwanese grants, only local or Taiwanese companies may compete. For Japanese grants, procurement is completed in Japan and then an in-kind contribution is given to Palau. The US Government grants are open and follow the Procurement Law of Palau, as long as they are all audited afterwards. A Selection Committee (ad hoc) is created for each bid, which changes for every project and always includes the end user. The practice of this Selection Committee is a good practice but not explicitly provided for in the Law.

State Governors (for amounts below USD20,000) can act as procurement officers, following the Procurement Law.

In particular when international goods are sought to be acquired, then there is a greater 'check' required; for example, for pharmaceutical goods, a procurement officer might consult with the World Health Organization.

The Law is clear on the timelines (i.e. public notice is for 15 days, bidding for 30 days) and manner that is to be followed (i.e. advertised in newspaper, on the radio, etc.); as a matter of practice, sometimes, it is also advertised internationally if what is sought is not available on the island.

If procedures need to be changed, then the tender needs to be resubmitted with the same timeline.

No e-procurement system is currently in existence, but the Ministry of Finance has created the possibility of using an electronic notice.

According to the Procurement Law, if an appeal is filed, it needs to be acknowledged within 5 working days. The timeline is 30 days to resolve an appeal.

The consequences for failing to follow the procurement procedures include civil penalties and the possibility to debar/suspend the vendors, which is limited to 30 days disbarment.

Civil penalties:

40 PNC 661 provides as follows:

An employee who violates the provisions of this chapter shall be subject to adverse action as may appropriate in his particular circumstances. This action includes, but not limited to, reprimand, suspension without pay, termination of employment, civil injunction, civil suits for damages or return of government money, or criminal prosecution. Procurement Officers may conduct proceedings providing for reprimand and/or suspension without pay for sixty (60) days.

A contractor who violates a provision of these rules and regulations shall be subject to a written warning of reprimand, the termination of the contract or suspension from being a contractor or subcontractor under a government contract in addition to other penalties prescribe by law.

All proceedings under this section must be in accordance with due process requirements including, for employees, the provision of the Administrative Procedure Act and Title 33 of the Palau National Code Annotated and for non-employee a right to notice and an opportunity for a hearing prior to imposition of any termination, debasement, or suspension from being a contractor or subcontractor under government contract.

In practice, there are challenges in relation to procurement, namely violations of the Procurement Code (such as nepotism, kickbacks and self-dealing) that have no criminal penalties. Under 40 PNC 653-660, kickbacks, self-dealing and giving contracts to family members is considered a "breach of ethical standards". 44 PNC 661 is the penalty provision of this section; however it only provides for civil penalties, and mentions these are in addition to any criminal penalties; no criminal penalties are imposed in this section itself.

While 40 PNC 654 covers nepotism in the procurement and contracting processes, no criminal penalties are provided for. This has made past prosecutions of severe nepotism very difficult. See *ROP v. Sakuma*, 10 ROP 221 (Tr. Div. 2003).

40 PNC 406 makes it illegal to "expend, obligate, or certify the expenditure or obligation of any public funds for any purpose in excess of the amount appropriated by law for that purpose". It also makes it illegal to direct another to over expend public funds. 40 PNC 406 further prohibits disciplining or otherwise altering the employment status of a public employee based on the employee's refusal to over expend public funds.

The penalties for violation 40 PNC 406 are:

1. a violator may be liable for \$2,500.00 or the amount of any expenditure or obligation in excess of that provided for by law.
2. A criminal fine not to exceed \$500,000.00 USD.
3. Imprisonment for not more than two years.

(b) Observations on the implementation of the article

The Republic of Palau's system for procurement is codified in the Palau Statutory Framework for National Government Procurement in Title 40, Chapter 6. Under the PNCA, procurement includes "acquisition by any means" and all phases of said acquisition but does not encompass personal service contracts for individuals

employed by Republic officials. The Procurement Law is used for any tender over USD 20,000. The Palau government has 3 procurement officers: the Director of Public Services, the Director of Public Works, and the Chief of Property and Supply Division.

The reviewers were informed that in the Property and Supply Division, which addresses goods to be procured, there is an informal practice of not deleting old files. In Public Works, which addresses the procurement of capital improvement projects, grants through Taiwan and Japan follow their respective countries' procurement procedures, but US grants follow Palau procurement procedure, as long as they are audited afterwards. Public Works creates an ad hoc Selection Committee for each bid, but this practice is not codified in law.

Under the Procurement Law, State Governors may act as procurement officers for amounts below USD 20,000. During the country visit, it was confirmed that they act as "one-stop-shops", meaning that a State Governor can issue and decide on procurement matters below USD20,000 and can also bypass the Foreign Investment Board.

Subparagraph (a)

Under 40 PNCA, there are 8 types of procurement procedures, each with their own provisions. Under section 615, invitations for bids must include certain information, including notice, information for placing bids, purchase descriptions, and performance requirements, amongst others. Section 616 provides requirements for public notice of the invitation for bids, which includes direct mailing, publication in a newspaper, posting at certain government offices and buildings, and broadcast on radio and television, as well as government websites. The PNCA also contains provisions for bidding time, bid receipt, bid opening and recording, and awards. Palau has procedures for opening and recording bids that involve witnesses for opening and written summaries available for public inspection. Section 624 on awards addresses notice for successful and unsuccessful bids, contract presentation, negotiation processes, and requirements for the bid accepted in relation to the budget for the procurement. Section 630 addresses when and why invitations for bids may be cancelled and the recording of the reasons for this cancellation.

Subparagraph (b)

Section 631 requires that awards shall only be made to "responsible bidders or offerors," which relates delineated specifications, such as having adequate financial resources to perform under the contract and meeting the qualifications to receive the award. Section 361(b) requires that purchases for goods or services exceeding \$100,000 have a written, detailed, substantiated determination of responsibility prior to any award. All invitations to bid and requests for proposals must contain a clause related to the right to inspect the bidder's place of business, and the language of this clause is provided in the text.

Subparagraph (c)

Section 624 states that bids are accepted based on 5 criteria: availability of funds, lowest responsible bid, ability to perform the project according to set standards, placement of the bid within 30 days of the bid opening, and the bidder fulfilling the criteria to be a "responsible bidder" pursuant to section 631.

Subparagraph (d)

Section 649 addresses legal recourse and remedies for procurement procedures. Actual or prospective bidders, offerors, and contractors may protest to the Procurement Officer concerned in writing within a given timeframe. Procurement Officers must acknowledge receipt of protest and render a final decision within a set period of time. The aggrieved may resolve the controversy with the Procurement Officer and can appeal the Procurement Officer's final decision to the Supreme Court of the Republic. Section 650 addresses remedies for when the laws or regulations for procurement have been violated, including when contracts awarded will be upheld, terminated, or declared null and void. Section 651 addresses contractual disputes between the government and contractors.

Subparagraph (e)

Under section 653, misconduct to realize personal gains through public employment are considered a breach of public trust. It is mandatory that all employees meet the requirements set out in sections 655–660. Section 654 addresses employee conflicts of interest, defining what constitutes a conflict. Under this section, a conflict does not occur for competitive sealed bidding or competitive negotiation when the employee has an interest with a government agency other than their own, is screened from the procurement, and discloses the ownership interest.

Employees with a conflict are required to disclose this to the Procurement Officer and withdraw from participation in the procurement. Section 655 addresses disclosure requirements for when an employee must disclose interests in a business which has bid on a government procurement actions recommendation. Section 656 prohibits kickbacks and gratuities related to procurement processes, and section 657 requires the prohibitions from section 656 be placed prominently in every contract and contract solicitation. Section 658 address restrictions on present and former employees to seek employment with a person contracting with the employee's government agency or act as an agent on behalf of anyone other than the government in relation to procurements in which the employee was substantially involved. Section 659 prevents the use of confidential information for personal gain. Finally, section 660 prohibits collusion between bidders.

During the country visit, it was provided that for the procurement of international goods, greater checks are required.

Section 661 imposes civil penalties for violations of the provisions described above committed by employees or contractors. There are currently no criminal penalties for violations of the Procurement Code. During the country visit, it was further confirmed that there is no form of blacklisting. There is also no law to prevent price-fixing in public tenders, and sole-source procurements are only regulated to the extent that they are of \$US 20,000 or less in value (s. 627).

The reviewers raised questions and concerns in relation to the threshold of \$US 20,000, which had recently been lifted from \$US 10,000.

During the country visit, it was provided that the Office of the Public Prosecutor can audit also procurements.

The reviewers recommended that Palau revise the procurement legislation to (a) address price-fixing and strengthen the competitive process, including at the State level and (b) strengthen the legal recourse and remedies to address disputes over adherence to applicable rules and procedures.

Paragraph 2 of article 9

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

- (a) Procedures for the adoption of the national budget;*
- (b) Timely reporting on revenue and expenditure;*
- (c) A system of accounting and auditing standards and related oversight;*
- (d) Effective and efficient systems of risk management and internal control; and*
- (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.*

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has implemented the provision under review. The Republic meets this requirement through the enactment of the Budget Reform Act 2001- 40 PNCA Chapter 3 (section 301).

40 PNCA Section 321 places the responsibility of Annual Budget preparation on the President who will introduce it to the OEK.

Procedures for the adoption of the national budget are set out under sub-chapter II of 40 PNCA as follows:

40 PNCA § 322. Budget call.

The President shall issue a budget call and prescribe the format, order, arrangement, and contents of the annual budget for all budget activities. The annual budget amounts of any budget activity that fails to respond to the budget call on or before the second Tuesday of February; said annual budget activity shall be established by the President.

40 PNCA § 323. Annual budget requirements.

The annual budget shall contain:

- (a) a funds availability analysis;

- (b) schedules detailing actual expenditures and obligations for the past fiscal year and providing estimated expenditures and obligations for the current and next fiscal years;
- (c) a list of personnel and salaries for each budget activity listed in the national budget at the end of the last fiscal year, the current fiscal year, and projected for the next fiscal year;
- (d) operation and maintenance impact statements for capital improvement projects;
- (e) details of current or proposed investments and all outstanding or proposed loans to the national government;
- (f) a statement of the balance of the general fund and any other funds of the National Treasury for the last fiscal year and the projected year-end balance for the current fiscal year;
- (g) a budget report by the President summarizing the last fiscal year and a statement of objectives and strategies explained with reference to the Palau National Master Development Plan (PNMDP) and the Economic Development Plan. The budget report shall summarize all anticipated revenues and relate them to proposed expenditures and obligations. The budget report shall also summarize the financial condition of the Republic; and
- (h) such other data that the President includes to explain and justify the proposed annual national budget.

In relation to sub-paragraph (b):

40 PNCA § 324. Preparation and introduction of annual national budget.

The annual national budget shall be prepared and introduced as follows:

- (a) The head of each budget activity shall submit a proposed operating budget for the next fiscal year, in accordance with budget call instructions, not later than second Tuesday of February of each year. Heads of budget activities may also submit requests for funding for capital improvement projects; such requests shall be transmitted and justified separately from operating budget funding requests. For budget planning and balancing purposes, the Olbiil Era Kelulau and Judiciary shall submit to the President summary amounts for their respective proposed operational budget activities.
- (b) The President shall introduce an authorization and appropriation bill and submit annual budget documentation to the Olbiil Era Kelulau by April 15th of each year. Sums proposed to be authorized need not be proposed for appropriation in the same bill.

[The supplementary budget is provided for in 40 PNC 404 (c)]

In relation to subparagraph (c):

40 PNCA § 223. Duties of the Public Auditor.

- (a) Not later than June 30 of each year, the Public Auditor shall transmit to the President and to the presiding officer of each house of the Olbiil Era Kelulau an annual report for the previous fiscal year required by Article XII, Section 2, of the Constitution. The report shall consist of a financial audit of the National Treasury, each trust fund, each other fund of any agency whether or not appropriated, each contract to which any agency is a party, and each grant made or received by any agency. The audit shall cover the receipt, possession, and disbursement of public funds including all liabilities, receivables, and accruals of any agency, all taxes, fees, receipts, and other revenues of any agency, all other financial transactions involving any agency, and any financial statement issued or prepared by any agency. Personal service contracts and prime contracts with employees of any agency shall be audited as part of the regular operations and activities of the agency.
- (b) The Public Auditor shall from time to time make such other audits of the Republic's agencies, activities, contracts, or grants as are possible within the budget provided him and as he deems to be in the public interest and consistent with this chapter.
- (c) Upon request of an agency of the Republic the Public Auditor shall provide its opinion as to whether or not certain practices are in accord with generally accepted accounting principles.
- (d) The Public Auditor shall undertake as soon as possible, a financial audit of all expenditures and receipts of the Republic since its inception as a constitutional government in 1981. The result of this audit shall be submitted to the Coordinating Group as established by section 230 of this chapter, and in accordance with its rules and procedures.

40 PNCA § 227. Centralization of all auditing services required by an agency of the Republic.

The Office of the Public Auditor shall conduct or supervise all audits required for, or sought by an agency of the Republic.

40 PNCA § 228. Audit standards.

(a) The audit standards shall be consistent with the provisions of this chapter and with generally accepted auditing standards. The audit standards shall incorporate the Standards for Audit of Government Operations, Programs, Activities, and Functions published from time to time by the United States General Accounting Office, including those standards issued by the American Institute of Certified Public Accountants referred to therein.

(b) All audits conducted or caused to be conducted by the Public Auditor shall be performed with [the] highest degree of professionalism and with strict avoidance of any degree of partisanship or bias.

40 PNCA § 229. Audit procedures and requirements.

(a) At the conclusion of the audit, the Public Auditor or his designee shall discuss the audit with the officials whose agency, grant, contract, or activity is subject to audit and submit to them a list of his proposed findings which may be included in the audit report. The preliminary audit and proposed findings shall not be made public prior to the receipt of comments from the agencies solicited. If the officials are not available for personal receipt of the list of audit findings, then delivery shall be deemed made when it is delivered to the agency. The agency shall submit to the Public Auditor within 30 days after the receipt of the list of findings, its written statement of explanation or rebuttal concerning any of the adverse or critical audit findings, including any corrective action to be taken to preclude a recurrence of any adverse findings. The Public Auditor shall promptly notify the agency involved as well as the Coordinating Group in the event of an agency's failure to respond or the filing of unresponsive answers to the adverse or critical audit findings. The Public Auditor shall publish the substance of the agency response in the audit report.

(b) An audit report shall make special mention of:

- (1) any violation of the laws within the scope of the audit; and
- (2) any improper expenditure, any improper accounting procedures, all failures to properly record financial transactions, and all other inaccuracies, irregularities, shortages, and defalcations.

(c) Specific allegations naming the persons involved in improper or illegal acts found in connection with an audit shall be included in a separate confidential special report which shall be transmitted only to the Attorney General, the Interagency Audit Coordinating Advisory Group and Federal agencies when applicable.

In relation to subparagraph (d):

The Republic of Palau Government has in place a financial management system governing the management of public funds. The system includes policies and procedures for the collection and expenditure of public funds. The system further contains policies and procedures (internal controls) to safeguard the use of public funds and properties. Control systems such as certification of funds ensures that no public official can expend or obligate public funds prior to certification by the Director of Bureau of Budget and Planning that funds are available to incur the expenditure. This particular internal control mechanism implements public policy that prohibits expenditure or obligation of public funds without budget authority. Further, the Procurement Law and Regulations are in place to ensure that government procurements are administered competitively and provide for a level playing field. Moreover, the Government has property management policies and procedures to control the procurement, use, and disposition of government property.

As previously mentioned, annual audits are conducted to ensure that these internal controls, policies and procedures, are being enforced by management, which are reported in the audit report if non-compliance are discovered by auditors.

40 PNCA § 224. Special duties to act to prevent fraud, waste and abuse in the collection and expenditure of public funds.

(a) The Office of the Public Auditor shall specially act to prevent and detect fraud, waste and abuse in the collection and expenditure of all public funds. The Public Auditor may audit any transaction involving the procurement of supplies or the procurement of any construction by agencies of the Republic and the procurement of any supplies and services in connection with such construction.

(b) The Public Auditor may conduct audits and inspections, when necessary, relating to programs and operations involving expenditure of public funds. He may review legislation and regulations relating to programs and operations involving expenditure of public funds and may make recommendations concerning the effect of such legislation or regulation on the prevention and detection of fraud, waste and abuse. He may recommend policies, which will assist in the prevention or detection of fraud, waste and abuse. The person

in charge of, or the governing body of any agency of the Republic, involved in the expenditure of public funds for the purpose of procurement of supplies or construction, and the services and supplies in connection therewith, may request the assistance of the Office of [the] Public Auditor with respect to implementation of any suggested policy.

40 PNCA § 230. Establishment of a Coordinating Group.

(a) An Interagency Audit Coordinating Advisory Group is established consisting of the Presiding Officer of each House of the Olbiil Era Kelulau, the Director of the National Treasury, and the Attorney General.

(b) The Coordinating Group shall not be deemed an agency for purposes of this chapter or any other law, but shall meet or confer as necessary to perform the functions assigned to it by this chapter.

(c) The Coordinating Group shall review all audit reports of the Public Auditor, and the Public Auditor shall discuss the manner in which his recommendations can be implemented with the assistance of the members of the Coordinating Group. The Coordinating Group shall recommend to the President and to the Olbiil Era Kelulau any changes in law or regulations, which it finds necessary or desirable as a result of its work with the Public Auditor.

In relation to subparagraph (e):

This measure is provided for under **Title 40 PNCA § 226 paragraph (b)** as follows:

Outside specialists may be hired.

(b) If the Public Auditor fails to schedule an audit so that it can be completed in time to comply with any applicable law or the terms of any loan, grant, financial assistance, or contract, or if the Public Auditor fails to commence, conduct, or complete any audit as required by law, the person or agency concerned may, upon the approval of the President and Public Auditor, and subject to the availability of funds, enter into a contract with any independent certified public accountant for the purpose of conducting the audit. The audit shall be conducted as closely as possible to the standards adopted by the Office of the Public Auditor.

Reports on revenue and expenditure are published by Bureau of Budget and Planning (Office of Planning and Statistics) on their website (palaugov.org/rpo-statistical-yearbooks).

Fiscal Year Reports of the Office of Public Accountant disseminated through the Government website (palaupa.org).

The Government of Palau also engages the services independent auditors licenced by the Palau Board of Accountancy to audit its Financial Statements in accordance with the US OMB Circular A-133 compliance.

The Office of the Auditor prepares and transmits its annual report to the President and the Presiding Officers of the Palau National Congress.

The Office of the Public Auditor on annual basis contracts the whole-of-government financial audit to independent CPA firms. The CPA firms have to qualify through the Palau Board of Accountancy in order to practice in Palau.

In conducting audits, any suspected cases of fraud or corruption are reported by the Public Auditor in a special confidential report to the Office of the Attorney General or the Special Prosecutor for further action.

The annual financial audit of the national Government produces two reports: (1) an Independent Auditor's report on the audit of the financial statements; and (2) an Independent Auditor's Report on Internal Control and Compliance.

The auditor's report on internal controls and on compliance contains finding and recommendations on specific instances of non-compliance with internal controls and non-compliance with laws and regulations. As previously mentioned, copies of these reports are transmitted to the leadership.

The Office of the Public Auditor's performance audits normally focus on internal controls and non-compliance with applicable laws and regulations. Copies of the reports are transmitted to the Office of the Attorney General and the Special Prosecutor. All audit reports of the Office of the Public Auditor and those conducted by independent accounting firms are posted on the Office of the Public Auditor's website: <http://www.fsmopa.fm/>.

(b) Observations on the implementation of the article

As noted above, the Republic of Palau has indicated that it meets the requirements of this provision through the Budget Reform Act, codified in 40 PNCA Chapter 3. The President proposes the annual budget to the OEK. The budget must contain a funds availability analysis, a budget report by the President on the last fiscal year, and data to explain and justify the proposed budget, among other things. The national budget is prepared based on proposed operational reports from the heads of budget activities, the OEK, and the Judiciary. The President must submit an authorization and appropriation bill and annual budget documentation to the OEK by April 15th of each year.

Reports on revenue and expenditure are published online by the Bureau of Budget and Planning. The Office of Public Auditor also publishes fiscal year reports online.

The Public Auditor transmits an annual report and audit on the previous fiscal year by June 30th of each year. This audit is required by Article XII, Section 2, of the Constitution and codified at 40 PNCA, section 223. The Public Auditor is also charged with making audits of agencies, activities, contracts or grants where possible and as needed. The Public Auditor also provides opinions to agencies answering requests regarding the acceptability of certain practices. The Public Auditor must comply with the audit standards, procedures and requirements set out in sections 228–229. Palau audit standards incorporate US standards published by the US General Accounting Office.

Palau has a financial management system that governs the management of public funds, which includes policies and procedures for the collection and expenditure of public funds. This system contains internal safeguards for the use of public funds and properties, such as the certification of funds. The Public Auditor also has special duties under section 224 to prevent and detect fraud, waste and abuse in the collection and expenditure of public funds. The Public Auditor may conduct audits and inspections when necessary related to the expenditure of public funds and may make recommendations regarding legislation and regulations to prevent future fraud, waste, or misuse of public funds. Heads of agencies may also request such recommendations from the Public Auditor. Under section 230, a Coordinating Group was established to review the audit reports of the Public Auditor and make recommendations for changes in law or regulations to the President and the OEK. The Office of the Public Auditor also contracts out a whole-of-government financial audit to an independent, external auditing firm annually. These independent audits are published on the Office of the Public Auditor's website.

During the country visit, it was further provided that under section 226(b), an outside specialist may be hired to conduct an audit when the Public Auditor fails to schedule the audit so that it may be completed on time.

Paragraph 3 of article 9

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has implemented the provision under review.

The Bureau of Palau National Archives is in the process of implementing the Archives Regulations as well as a record management program. The Bureau has been a member of PARBICA (Pacific Regional Branch, International Council of Archives), which includes 13 countries since 1981, as well as the International Council of Archives (based in France) and has been involved in conferences and workshops.

The National Archives are housed at the Capital Building. A proposal is currently being put together to request a digitalization process. One of the challenges is that there has been no preservation of documentation since Palau's independence. However, the Palauan Judiciary will be a pilot to try and preserve documents together with Archives. It was provided that in 2007, Palau's National Archives benefited from a cooperation programme with the Malaysian Archives.

Relevant legislation to the provision under review includes:

TITLE 19. CULTURAL RESOURCES

Chapter 1. Historical and Cultural Preservation Act

Subchapter I. General Provisions

§ 405. Deposit of public records in the Archives Office.

All public records of the age of five (5) years or over, other than those which under any statute are required to be held in the custody of a specified person or government office, which in the opinion of the Archivist are of sufficient value to warrant their preservation as:

- (a) evidence of the organization, functions and transactions of the government office in which they were originally made or received;
- (b) evidence of public or private personal or property rights or civic rights; or
- (c) containing historical or general information;

shall be transferred to the custody of the Archivist and be deposited in the Archives.

§ 406. Deposit of public records of less than five years of age.

The Archivist may allow the deposit in the Archives of public records of less than five (5) years of age if he considers that they are of sufficient value for deposit. Any deposit of public records under the provisions of this section may be subject to any special conditions imposed by the administrative head of the government office making the deposit.

§ 410. Public records not to be destroyed or disposed of without the authority of the Archivist.

(a) No person shall destroy or otherwise dispose of or authorize the destruction or other disposal of any public record of any kind whatsoever that is in his possession or under his control, except with the consent of the Archivist given in accordance with the provisions of this chapter. Before authorizing the destruction of any public record or any class of public records, the Archivist may, if he thinks fit, consult with any person whom he considers qualified to advise him as to the value thereof for permanent preservation.

(b) No document in the Archives shall be destroyed without the written and signed approval of the Archivist and the Chairman of the Council authorizing the destruction of that particular document which shall be specifically identified in the authorization. Records of all destroyed documents shall be kept.

§ 418. Offenses and penalties.

Any person who willfully or negligently damages any public records or willfully or negligently disposes of or destroys any public records otherwise than in accordance with the provisions of this chapter shall be guilty of destruction of public property and shall be liable, on conviction, to a fine of two hundred dollars (\$200) and may at the discretion of the court be denied access to the Archives Office for such period of time as the court sees fit.

Chapter 15

§ 1501. Forgery

Every person who shall falsely make or materially alter a writing or document of apparent legal weight and authenticity, with intent thereby to defraud, shall be guilty of forgery, and upon conviction thereof shall be imprisoned not more than 10 years, or fined not more than \$5,000, or both.

In the National Archives, there are 3 employees.

The Archives receive approximately 80 requests per year for information.

(b) Observations on the implementation of the article

Government records are preserved by government departments or by a specific person for at least 5 years (title 19, s. 405, PNC). After that time or upon agreement, the National Archives maintains these records, pursuant to Title 19 (PNC). The Palau National Code criminalizes the damaging or destruction of public records (title 19, s. 418) and forgery (title 17, sects. 2802-2804).

As noted above, the Bureau of Palau National Archives is in the process of implementing Archives Regulations and a record management program. The Bureau is a member of PARBICA. There is currently a proposal to

digitize the national archives. The Archives and Judiciary will work together to preserve documents; however, certain records will be disposed of as prescribed by the Court.

(c) Technical assistance needs

Palau indicated that it would benefit from the following technical assistance:

- (a) Other: Support to the digitalization process of the National Archives outlined in paragraph 3 of UNCAC article 9.

Such support has not been provided to date.

Article 10. Public reporting

Subparagraph (a) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

- (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;*

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has partially implemented the provision under review.

The relevant legislation is **the Administrative Procedure Act**, Title 6 PNC and **the Open Government Act**.

- (1) Title 6 PNC (Administrative Procedures Act, APA) provides for public access to information on three functions of government agencies, namely, rule-making (Subchapter II- Section 121 to Section 133), adjudication (Subchapter III-Section 141 to 148) and licensing (Section 146).

TITLE 6. ADMINISTRATIVE LAW

Chapter 1. Administrative Procedure Act

Subchapter I. General Provisions

Section 102. Definitions.

In this chapter:

- (a) Agency means a ministry, bureau, division, board, commission, department, officer or other administrative unit of the national government authorized by law to make rules or regulations or to determine contested cases, except the Olbiil Era Kelulau and the Judiciary;

... (e) Party means a person named or admitted as a party, or properly seeking and entitled, as a matter of right, to be admitted as a party;

- (f) Person means any individual, partnership, corporation, association, governmental subdivision, or private organization or entity of any character, and includes another agency;

- (g) Rule means the whole or a part of an agency statement of general applicability that implements, interprets, regulates or controls conduct or action, prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment, repeal, or suspension of a prior rule, but does not include a statement exclusively concerned with the internal management of an agency not affecting private rights or procedures available to the public, nor declaratory rulings issued pursuant to section 131, nor intra-agency memoranda.

Section 103. Applicability.

- (a) This chapter applies to all agencies and all proceedings not expressly exempted.
- (b) This chapter creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes. To the extent that any other statute would diminish a right created or duty imposed by this chapter, the other statute is superseded by this chapter, unless the other statute expressly provides otherwise.
- (c) An agency may grant procedural rights to persons in addition to those conferred by this chapter so long as rights conferred upon other persons by any provision of law are not substantially prejudiced.

Subchapter II. Rule-Making

Section 122. Public inspection.

In addition to other rule-making requirements imposed by law, each agency shall:

- (a) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;
- (b) make available for public inspection all final orders, decisions, and opinions of general applicability or effect upon the public.

Section 123. Same; invalidity if none made available.

No agency rule, order, or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection as required by this chapter. This provision is not applicable in favor of any person or party who has actual knowledge of a rule, order or decision.

Section 127. Effective date and filing of rules.

Every agency shall transmit a copy of each rule adopted by it to the President on the day of adoption. The President shall approve or disapprove the rule within 20 consecutive calendar days after receipt. If the President does not act within 20 days, or if the President approves the rule, it shall become effective 30 days after its adoption by the agency, except that:

- (a) if a later date is required by statute or specified in the rule, the later date shall be the effective date; and
- (b) an emergency rule shall become effective immediately upon filing the rule with the Bureau of Domestic Affairs, unless otherwise provided by law.

Section 128. Publication of rules.

- (a) The Director of the Bureau of Domestic Affairs shall compile, index, and maintain all rules adopted by each agency. Compilations shall be supplemented or revised promptly as rules are adopted, amended or revoked.
- (b) The Director of the Bureau of Domestic Affairs shall publish for public distribution, an annual bulletin setting forth a summary of each rule filed during the preceding calendar year.
- (c) The Director of the Bureau of Domestic Affairs shall within seven days of adoption provide a copy of the full text of each rule to each state where it shall be kept on file and be available for public inspection, to the presiding officers of both houses of the Olbiil Era Kelulau, and to the Chief Justice.

TITLE 19. CULTURAL RESOURCES

Chapter 1. Historical and Cultural Preservation Act

§ 412. Access to public records in the Archives.

Except as may be otherwise provided in any written law, all records deposited in the Archives shall be available for public reference in accordance with the provisions of any regulations made under this chapter. Nothing contained in this section shall limit the powers of any competent court to order the production of any public record of the Republic. Any person may, with the consent of the Archivist, make or cause to be made at his own expense copies of or extracts from any public records which are available for public reference under this section.

§ 413. Publication of public records.

Following consultation with the Council, the Archivist may authorize the publication of any public record deposited in the Archives and available for public reference which he considers to be of sufficient interest to warrant its publication.

(2) In 2014, the **Open Government Act** passed (1 PNC, Chapter 9). The intent of this Act is for the actions of the Government to be conducted openly, that all deliberations be transparent, and that all public documents be open for public inspection in line with Article V Section 12 of the Constitution.

1 PNCA § 901, with a reference to RPPL 9-32 **Section 2, Presidential Statement of Introduction.**

Pursuant to Article VIII, Section 12: "The President may introduce measures in the Olbiil Era Kelulau." The President finds and declares that all government entities, whether quasi or whole, exist to serve the people in the conduct of the people's business. It is the intent of this Act: that the actions of the government be conducted openly, that all deliberations be transparent, and that all public government documents be open for public inspection. Indeed, this Act is intended to provide a legal framework for the rights that are already guaranteed to the people of the Republic in Article V, Section 12 of the Constitution of the Republic, which states that: "A citizen has the right to examine any government document and to observe the official deliberations of any agency of government."

It is a fundamental aspect of a democracy that government governs the people only with the consent of the people. The people, therefore, in consenting to be governed do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The President hereby finds that the people of the Republic insist upon being informed of the workings of the government so that they may retain control over the instruments of government that they have created for governance with their consent.

Accordingly, it is the intent of the President of the Republic that, as introduced, the provisions contained in this bill, which is modeled on the Commonwealth of Northern Marianas Islands Public Law No. 8-41 (effective Jan. 21, 1994), in providing for an open government and open access to the documents of the government the law shall be liberally interpreted, and that the provisions providing for exceptions to the open meeting requirements and open records requirements the law shall be strictly interpreted against closed meetings and the non-disclosure of records.

1 PNCA § 901, with a reference to RPPL 9-32 **Section 3, Legislative Findings.**

The legislature finds that having an open and transparent government is important to ensure the public is involved in the government to the fullest extent possible, consistent with the constitutional mandate for an open government. At the same time, the legislature recognizes the balance that must take place with privacy constraints and the realities imposed by financial administration and practicalities in operating government bodies.

1 PNC § 901 Definitions.

(a) As used in this Act, unless the content indicates otherwise, the following definitions shall apply:

(1) "Action" means any transaction of official business by a governing body.

(2) "Final action" means a collective positive or negative decision by a governing body on a particular issue with substantive relevance to the public or a vote by a majority of the members of a governing body, when sitting as a body or entity and making decision or voting upon a bill, motion, proposal, resolution, order, report, or ordinance.

(3) "Governing body" means any government entity created under the Constitution of the Republic, by treaty, by law, by regulation, or by executive order, including quasi-government entities, such as, for example, Palau Public Utilities Corporation, Palau National Communications Corporation, National Development Bank of Palau, and any subdivisions of a government entity or quasi-government entity.

(4) "Notice" means to publish the time and place where a governing body will meet along with a brief description of the matter that is to be discussed or the final action that may take place, and to announce such notice over at least one (1) radio station and post such notice at the Palau Supreme Court and the Olbiil Era Kelulau at least twenty-four (24) hours before the time that the meeting is scheduled to commence.

(5) "Public record" means any written or printed report, book, paper, map, or plan of a governing body, which is the property thereof and in or on which an entry has been made or is required to be made by law, or which any public officer or employee of a governing body has received or is required to receive for filing, but shall not include records that invade the right of privacy of any person or business entity as defined in this Act.

1 PNC § 905 Exceptions.

The following information shall not be made available to the public:

- (a) information properly classified as secret in the interest of national defense or foreign policy as follows:
 - (1) information may be classified as secret in the interest of national defense where the disclosure of the information would compromise the current ability of the Republic of Palau or the United States to provide for the defense of the Republic of Palau;
 - (2) information related to negotiations with another country or another foreign entity that has its principal place of business in another country.
- (b) information related solely to internal operation procedures and practices of the governing body the release of which would potentially risk circumvention of law or regulations;
- (c) information specifically exempted by other statutes;
- (d) a trade secret or privileged or confidential commercial or financial information obtained from a person or legally established corporation or entity in the Republic of Palau;
- (e) a privileged inter-agency or intra-agency memorandum or letter;
- (f) a personnel, medical, or similar file the release of which would constitute a clearly unwarranted invasion of personal privacy; provided that disclosure of a government employment contract or contract of an independent contractor working for a government, including any contracts that are performed as part of the execution of a foreign aid grant, are deemed to not be an invasion of personal privacy;
- (g) information compiled for law enforcement purposes, the release of which
 - (1) could reasonably be expected to interfere with law enforcement proceedings,
 - (2) would deprive a person of a right to a fair trial or an impartial adjudication,
 - (3) could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - (4) could reasonably be expected to disclose the identity of a confidential source,
 - (5) would disclose techniques, procedures, or guidelines for investigations or prosecutions, or
 - (6) could reasonably be expected to endanger an individual's life or physical safety;
- (h) information contained in or related to examination, operating, or condition reports about financial institutions that the Financial Institutions Commission regulates or supervises;
- (i) attorney client privileged communications or attorney work product;
- (j) judicial deliberations; or
- (k) information related to informal negotiations or discussions that take place as a part of the decision making process of a governing body prior to a meeting where a final action is made; however, any negotiations or discussions that take place during a meeting in which a final action is taken shall be conducted in accordance with Section 5; and
- (l) information related to a declared and confirmed State of Emergency in accordance with the Constitution of the Republic.

1 PNC § 906 Records and government documents open to public.

- (a) Within ten (10) days of any request, all public records produced by a governing body shall be available by any person during regular business hours, unless the disclosure will take more time to produce due to exceptional circumstances or the volume of information requested, is in violation of the Constitution of the Republic, other law of the Republic, or is exempted under this Act.
- (b) All governing bodies shall develop procedures in order to promptly comply with the ten (10) days requirement. The person requesting access to public records shall bear the reasonable cost associated with the production.

1 PNC § 907 Penalties; Remedies.

- (a) Any person who seeks the disclosure of public records or government documents, or is wrongfully denied access to a meeting of a governing body may undertake any legal action necessary for the purpose of stopping violations or preventing threatened violations of this Act by members of a governing body.
- (b) Each member of a governing body who attends a meeting of a governing body where action is taken in violation of any provision of this Act, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of five hundred dollars (\$500) for the first offense and one thousand dollars (\$1,000) for all subsequent offenses. The civil penalty shall be assessed by a judge of the Palau Supreme Court in a successful action to enforce this Act. A violation of this

Act shall not constitute a criminal offense and the assessment of this civil penalty shall not give rise to any disability or legal disadvantage based upon conviction of a criminal offense.

(c) Any person responsible for the failure to timely disclose a public record shall be jointly and severally personally liable in the form of a civil penalty in the amount of five hundred dollars (\$500) for the first offense and one thousand dollars (\$1,000) for all subsequent offenses. The civil penalty shall be assessed by a judge of the Palau Supreme Court in a successful action to enforce this Act. A violation of this Act shall not constitute a criminal offense and the assessment of the civil penalty shall not give rise to any disability or legal disadvantage based upon conviction of a criminal offense.

(d) Any person who prevails against a governing body in any action in the Palau Supreme Court to enforce a violation of this Act shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action.

(e) Any governing body that prevails in defense of a civil action for a violation of this Act may be awarded reasonable expenses and attorney fees if the Palau Supreme Court also finds that the commencement of such civil action was frivolous and advanced without reasonable cause.

The Attorney General's office reports on an appeal that was just decided in favour of the government on a request for documents under the Open Government Act. In *Senators Akitaya et al v. Minister Obichang*, 2019 Palau 8 (March 6, 2019), the Supreme Court of Palau, Appellate Division affirmed the trial court's decision that the Government had complied with the OGA by providing a timely response under the statute.

As of March 2019, the Office of the Attorney-General had known of less than 3 requests for information in the past year.

The Ethics Commission currently does not have an electronic filing system (which is similar to other Government Departments). The aim is to put one in place.

(b) Observations on the implementation of the article

As noted above, in terms of legislation, Palau has the Administrative Procedure Act (APA) and the Open Government Act. The APA provides for public access to information for the rule-making, adjudication, and licensing performed by government agencies. Under the APA, agencies are required to make rules, policy statements, interpretations formulated, and final orders, decisions, and opinions available to the public. Agency rules and rulings are not effective until they are available for public inspection. Agency rules are compiled and published by the Director of the Bureau of Domestic Affairs, who also publishes an annual bulletin summary of the rules from the previous year and provides full text copies to each State to be kept on file for public inspection.

The Open Government Act passed in 2014 with the purpose to increase government transparency. The Act is meant to make all public documents open for public inspection in accordance with Article V, Section 12 of the Constitution. Pursuant to section 901 of the Act, the "intent of this Act: that the actions of the government be conducted openly, that all deliberations be transparent, and that all public government documents be open for public inspection". Section 901 also notes "the balance that must take place with privacy constraints and the realities imposed by financial administration and practicalities in operating government bodies". Section 901 further provides for the definitions, including action, final action, governing body, notice and public record. In the definition of "public record", it does "not include records that invade the right of privacy of any person or business entity as defined in this Act". The reviewers noted that the request-making procedure requires greater clarity. Conclusive reasons for withholding information include, for example, information classified as secret in the interest of national defense or foreign policy (title 1, section 905 (a)), trade secret or privileged or confidential commercial or financial information (title 1, section 905 (d)) and an "unwarranted invasion of personal privacy" pursuant to section (title 1, section 905 (f)). Based on section 905, it was provided by the reviewers that there is a strong presumption against non-disclosure. Moreover, the reviewers were informed that high-level government documents are considered strictly confidential and a security clearance, or an Open Government Act request, is required to access them. The timeline is outlined in the Act (e.g. decisions within 10 working days unless there is an exception circumstance, or because of the volume of information requested: section title 1, sect. 906(a)). Procedures are to be developed in order to comply with the 10-day requirement

(section 906(b)), but the reviewers were informed that this has not been drafted. Penalties for violation of the Act are provided for in title 1, section 907. This section also outlines that a person can take an action against a governing body to the Palau Supreme Court to enforce a violation of this Act (s. 907 (d) and (e)). It was noted that this was tested in 2019 in *Senators Akitaya et al v. Minister Obichang*, 2019 Palau 8 (March 6, 2019). However, given the resources needs to take action to the Palau Supreme Court and there being no possibility to appeal such a decision, the reviewers suggested that Palau may wish to consider a review of this procedure and the designation of an oversight body in the first instance, whose decision who could then be appealed to the Palau Supreme Court. Moreover, persons who release information in good faith do not appear to be specifically protected.

While there is no designated authority to deal with Open Government Act requests, the Attorney-General has acted as the default authority. In the past year, there have been less than three requests for information. It was provided that the Attorney-General's Office responds to Open Government Act requests within 10 days, as provided for in the Act. During the country visit, it was confirmed that there have been no trainings offered on the Open Government Act.

Moreover, sections 412 and 413 allow for access to public records in the National Archives and the publication of public records.

During the country visit, the Office of the Special Prosecutor and Office of the Public Auditor informed the reviewers that they work together with the media in relation to the dissemination of information. The radio and television broadcast public hearings. The President also has a weekly press conference to the public.

There is a Government website: <https://gov.fm/>; for the Office of the Special Prosecutor: <https://www.palauosp.org/>; for the Office of the Public Auditor: <http://www.palauopa.org/>. However, there is no website of the Attorney-General's Office.

The reviewers recommended that Palau consider taking measures to enhance transparency in its public administration by strengthening the Open Government Act.

Subparagraph (b) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has implemented the provision under review.

(1) Administrative procedures to facilitate public access to competent decision-making authorities are provided for under Section 125 of the Administrative Procedure Act, Title 6 PNC as follows:

Section 125. Notice procedure for adoption of rules.

(a) Prior to adoption, amendment or repeal of any rule:

(1) an agency shall give at least thirty (30) day's notice of a proposed rule by posting notice of the rule in the Office of the Bureau of Domestic Affairs, at the Judiciary Building and at the Olbiil Era Kelulau. The notice shall also be read over the radio broadcasting station at Koror on five (5) consecutive calendar days within the first fifteen (15) days after it is posted. Such notice shall be in English and Palauan and shall include:

(A) a short statement of either the terms or substance of the proposed rule or a description of the subject and issues involved;

(B) reference to the legal authority under which the rule is proposed;

(C) when, where, and how interested persons may present their views thereon; and

- (D) where copies of the proposed rule will be available for reading or distribution to the public;
- (2) an agency shall make copies of each proposed rule available for reading at the Office of the Bureau of Domestic Affairs.
- (3) for at least thirty (30) days after providing notice under this section, an agency shall afford all interested persons the opportunity to submit data, views, or arguments, in writing.
- (b) The agency shall conduct a public hearing on a proposed rule at its discretion, or if requested by either house of the Olbiil Era Kelulau or another government agency. An agency shall consider fully all written and oral submissions concerning the proposed rule.
- (c) If requested to do so by an interested person within thirty (30) days after adoption, amendment or repeal of any rule, the agency shall issue a concise statement of the basis upon which it has adopted, amended or repealed a rule.
- (d) To the extent that an agency for good cause finds that any requirements of this section are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, these requirements do not apply. In an action contesting a rule adopted under this subsection, the burden is upon the agency to demonstrate that any omitted requirements of this section were impracticable, unnecessary, or contrary to the public interest

(2) The relevant provisions setting out procedures under the Open Government Act in providing access to public are as follows:

1 PNC § 902. Meetings shall be open and public.

- (a) All meetings of a governing body shall be open and public, and all persons shall be permitted to attend any meeting of the governing body, unless otherwise provided by this Act or other law.
- (b) The minutes of all meetings of any governing body that are open and public shall be available upon request.
- (c) A meeting of a governing body, and the minutes of that meeting, shall not be required to be open and public where the matter under discussion relates to information that shall not be disclosed to the public under Section 8.

1 PNC § 903. No conditions to attendance may be required.

- (a) A governing body shall not require registration or any other prerequisite information to be filed with the governing body before permitting a member of the public entry to an open and public meeting of a governing body.
- (b) This Section shall not preclude voluntary sign-in sheets.

1 PNC § 904. Notice.

- (a) A governing body shall give notice of any regular meeting.
- (b) A governing body shall apprise a member of the public of any regular meeting upon request.
- (c) For purposes of this section, "regular" meetings shall mean recurring meetings or proceedings held in accordance with a schedule declared by statute, rule or regulation of the governing body, and any meeting in which a final action may take place.

(b) Observations on the implementation of the article

As noted above, the binding legislation is the APA and the Open Government Act. Under the APA, before a rule may be promulgated, notice must be posted in certain locations and read in English and Palauan over the radio. Notice must include information regarding the substance of the proposed rule, how to comment on the proposed rule, and where to find copies of the proposed rule. However, an agency may avoid fulfilling all the procedures described in the APA “for good cause”, if they find the requirements to be unnecessary, impracticable, or contrary to the public interest” for adopting a specific rule.

Under the Open Government Act, section 902 refers to all meetings of governing bodies being open and public, permitting all persons to attend any such meeting, unless provided for otherwise in this Act or other law (s. 902(a)). There are also no conditions to attendance, for example, registration or sign-in sheets (s. 906). Notice has to be given of such meetings (s. 904).

During the country visit, it was noted that the Office of the Special Prosecutor and Office of the Public Auditor actively facilitate public access e.g. through their websites, media campaigns, newspapers. The reviewers were also informed that a facility is being built that is to act as a “one-stop-shop” for the public to have easier access to competent decision-making authorities.

Subparagraph (c) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has partially implemented the provision under review.

40 PNCA § 231. Annual report.

The Public Auditor shall report on his activities and findings to the Olbiil Era Kelulau and the President at least once every calendar year, and this report shall be made public promptly.

40 PNCA Section 229 (b)

An audit report shall make special mention of:

- (1) any violation of the laws within the scope of the audit; and
- (2) any improper expenditure, any improper accounting procedures, all failures to properly record financial transactions, and all other inaccuracies, irregularities, shortages, and defalcations.

40 PNCA Section 229 (c) Specific allegations naming the persons involved in improper or illegal acts found in connection with an audit shall be included in a separate confidential special report which shall be transmitted only to the Attorney General, the Interagency Audit Coordinating Advisory Group and Federal agencies when applicable.

(b) Observations on the implementation of the article

As noted above, the Public Auditor makes annual reports to the OEK and the President. These reports are public. However, specific allegations naming the persons involved in improper or illegal actions is to be submitted in a separate confidential special report. No such report has been submitted to date.

During the country visit, the reviewers were informed that OSP also launched a website to provide access to its quarterly reports and past and present cases. In addition, according to its website the Public Auditor also publishes audit reports starting from 2010 on its website. However, neither the Public Auditor nor OSP periodically report on corruption risks.

The reviewers recommended that Palau consider taking measures to publish information, which may include periodic reports on the risk of corruption in its public administration.

(c) Technical assistance needs

Palau indicated that it would benefit from the following technical assistance:

(a) Other: Awareness-raising for public officials and the public; trainings for the media on corruption. Such support has not been provided to date.

Article 11. Measures relating to the judiciary and prosecution services

Paragraph 1 of article 11

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has implemented the provision under review.

Article X of the Constitution provides as follows:

Section 1. The judicial power of Palau shall be vested in a unified judiciary, consisting of a Supreme Court, a National Court, and such inferior courts of limited jurisdiction as may be established by law. All courts except the Supreme Court may be divided geographically and functionally as provided by law, or judicial rules not inconsistent with law.

Section 2. The Supreme Court is a Court of Record consisting of an appellate division and a trial division. The Supreme Court shall be composed of a Chief Justice and not less than three (3) nor more than six (6) Associate Justices, all of whom shall be members of both divisions. All appeals shall be heard by at least three justices. Matters before the trial division may be heard by one justice. No justice may hear or decide an appeal of a matter heard by him in the trial division.

Section 3. If the Chief Justice is unable to perform his duties, he shall appoint an Associate Justice to act in his place. If the office of Chief Justice becomes vacant and the Chief Justice has failed to appoint an Acting Chief Justice to act in his place, the President shall appoint an Associate Justice to act as Chief Justice until the vacancy is filled or the Chief Justice resumes his duties.

Section 4. The National Court shall consist of a presiding judge and such other judges as may be provided by law.

Section 5. The judicial power shall extend to all matters in law and equity. The trial division of the Supreme Court shall have original and exclusive jurisdiction over all matters affecting Ambassadors, other Public Ministers and Consuls, admiralty and maritime cases, and those matters in which the national government or a state government is a party. In all other cases, the National Court shall have original and concurrent jurisdiction with the trial division of the Supreme Court.

Section 6. The appellate division of the Supreme Court shall have jurisdiction to review all decisions of the trial division and all decisions of lower courts.

Section 7. The Judicial Nominating Commission shall consist of seven (7) members, one of whom shall be the Chief Justice of the Supreme Court who shall act as Chairman. The Bar shall elect three (3) of its members to serve on the Judicial Nominating Commission and the President shall appoint three (3) citizens who are not members of the Bar. The Judicial Nominating Commission shall meet upon the call of the Chairman and prepare and submit to the President a list of seven (7) nominees for the positions of justice and judge. A new list shall be submitted every year.

Section 8. No person shall be eligible to hold judicial office in the Supreme Court or National Court unless he has been admitted to practice law before the highest court of a state or country in which he is admitted to practice for at least five (5) years preceding his appointment. Any justice of the Supreme Court or judge of the National Court who becomes a candidate for an elective office shall, upon filing for such office, forfeit his judicial office.

Section 9. All justices of the Supreme Court and judges of the National Court shall hold their offices during good behavior. They shall be eligible for retirement upon attaining the age of sixty-five (65) years.

Section 10. A justice of the Supreme Court may be impeached only for the commission of treason, bribery, other high crimes, or improper practices, or on the grounds of his inability to discharge the functions of his office upon a vote of not less than two-thirds (2/3) of the members of each house of the Olbiil Era Kelulau. The judges of the National Court and the inferior courts may be impeached by a majority vote of the members of each house of the Olbiil Era Kelulau. During his impeachment or removal proceedings, a justice or judge may not exercise the power of his office. A justice or judge shall forfeit his office upon conviction of a felony or any high crime.

Section 11. The justices and judges shall receive compensation as prescribed by law. Such compensation shall not be diminished during their term of office.

Section 12. The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system. He may assign judges from one geographical department or functional division of a court to another department or division of that court and he may assign judges for temporary service in another court. The Chief Justice shall appoint with the approval of the Associate Justices, an administrative director to supervise the administrative operation of the judicial system.

Section 13. The Chief Justice shall prepare and submit through the President to the Olbiil Era Kelulau an annual consolidated budget for the entire unified judicial system. The national government shall bear the total cost of the system unless the Olbiil Era Kelulau requires reimbursement of appropriate portions of such cost by the state governments.

Section 14. The Supreme Court shall promulgate rules governing the administration of the courts, legal and judicial professions, and practice and procedure in civil and criminal matters.

Other examples of implementation include:

Judicial Branch: The judicial power of Palau is vested in a unified judiciary, consisting of the Supreme Court, the Appellate Court, the Land Court and the Court of Common Pleas. The Chief Justice is the administrative head of the unified judicial system.

The Supreme Court is a Court of Record consisting of an appellate division and a trial division. The Supreme Court is composed of a Chief Justice and at least three Associate Justices, all of whom are members of both divisions. All appeals are heard by at least three Justices. Matters before the trial division may be heard by one Justice. No Justice may hear or decide an appeal of a matter heard by him in the trial division. The appellate division of the Supreme Court has jurisdiction to review all decisions of the trial division and all decisions of lower courts.

Vacancies are announced in the public (also outside of Palau). One Justice is usually from the USA to ensure impartiality due to the 'smallness of Palau'.

All Justices are appointed by the President for life and can only be removed by impeachment for the commission of treason, bribery, other high crimes, or improper practices, or on the grounds of his inability to discharge the functions of his/her Office. The removal of a Justice from Office requires a vote of not less than two-thirds (2/3) of the members of each house of the OEK. Appointment to the bench comes from a list of seven (7) nominees submitted to the President by the Judicial Nominating Commission (JNC), who are required to submit a new list of nominees to the President every year. The JNC consists of seven (7) members: three (3) elected bar members, three citizens appointed by the President who are not members of the Bar and the Chief Justice. The Chief Justice presides as Chairman of the JNC.

By popular vote in the 2008 General Election, the Republic of Palau established the right to trial by jury; the law took effect on 8 January 2010. Only defendants accused of crimes punishable by a sentence of imprisonment of 12 years or more are entitled to a jury trial, which is mandatory unless waived by the defendant in writing. Qualified jurors must be 21 years or older, have not been convicted of a felony within the past five years, not currently incarcerated, and able to read and understand both the Palauan and English languages. Juries must consist of six (6) members and a unanimous verdict is required for a defendant to be found guilty.

Justices draft monthly, quarterly and annual reports. These are published in the newspaper.

The existing judicial information system is, in essence, Palau's internal case management system (contains all relevant information). A grant was received from Taiwan (approx. USD800K) to develop this.

There is an induction programme for Justices that consists of two weeks at the Judicial College in Nevada and there has also been a two-week programme in NZ in the past.

There is no mandatory requirement for Justices to undertake training courses, but there are a range of courses available that Justices can and do benefit from. Examples of corruption-related trainings include a specific one given by Australia, the US 9th Circuit and others (e.g. on money-laundering), the UN Pacific Regional Anti-Corruption Project (on judicial integrity) and the US (on the new Penal Code that was enacted in 2014).

There is no specific training on Codes of Conduct, but there is a bi-annual conference, during which several workshops/seminars are on the Codes.

In relation to the procedures governing case assignment and distribution, the Chief Justice assigns cases; Justices are obliged to report on conflicts. The Justices of Supreme Court deal with all cases (even misdemeanors) under a wide range of subject matters.

Palau's Constitution prohibits judges and justices from sitting on the appellate panel for any case they presided over at the trial level.

Measures aimed at guaranteeing transparency in the court process include all hearings being open to the public except for sealed matters (i.e. protection of victims, juvenile matters). The public can seek access to court judgments (except for sealed matters). A person can go to the Supreme Court or the capital (in person) to get the information; access via the website is limited (e.g. PaCLii). On average, per month, approx. 20 people would seek to be granted access to information.

Media can sit in and take notes, but video-taping needs to be requested of the Justice (photography is not allowed as it is too disruptive).

All proceedings are recorded; therefore, audio can be requested except for sealed matters.

In relation to outreach programmes, occasionally on new laws (e.g. family abuse law) there is outreach to schools by personnel; radio programmes (previously, Bar Talk e.g. when jury trials started, noting the challenge of getting a jury together in a small-island context).

There is no income and asset declaration form for the Justices, but the Code of Judicial Conduct binds them. There is a disclosure report in which Justices report on what they earn outside of their job, which is available to the public access, and any gifts received above USD50.

Conflicts of interest are regulated by the Code of Judicial Conduct and also have a specific procedure unique to Palau (relating to the community structure) in a Special Order (a good practice) to extend conflicts of interest. It is to be noted that the bench often includes one US judge, so as to ensure impartiality in a small island context.

The Palauan Judiciary is bound by the Model Code of Judicial Conduct (from the American Bar Association) and rules of admission. See: <http://www.palausupremecourt.net/>.

Disciplinary Mechanisms are covered in the Special Orders, Disciplinary Rules and Procedures; often modelled after the US taking into consideration the uniqueness of Palau.

If it were not covered, the Model Code of Judicial Conduct/ US (9th Circuit that includes Hawaii and Guam) would be relied on. Of interest is that the Palauan Bar is partially modelled on the Oregon Bar.

There have been no examples of ethical dilemmas, corruption risks, etc. for the judiciary.

No members of the judiciary have been subject to criminal proceedings as a result of alleged acts of corruption.

(b) Observations on the implementation of the article

The Palau Judiciary consists of the Supreme Court, Appellate Court, Land Court and Court of Common Pleas. The Chief Justice acts as administrative head of the judicial system. The Supreme Court consists of an appellate division and a trial division, and all Justices are a member of both divisions. No Justice may hear or decide on appeal a matter heard by him or her in the trial division. One Justice on the Supreme Court is typically from the

USA to ensure “impartiality” due to the “smallness of Palau.” Justices attend an induction programme consisting of two weeks at the Judicial College in Nevada. Justices have also taken optional training courses, such as one on money-laundering in Australia and one on judicial integrity held by the UN Pacific Regional Anti-Corruption Project.

Judges and Justices are bound by the Code of Judicial Conduct and the Model Code of Judicial Conduct promulgated by the American Bar Association. Judges turn to the ABA’s code when the Code of Judicial Conduct does not cover a topic. The Code addresses conflicts of interest and procedures for addressing such conflicts. Disciplinary mechanisms are addressed in the Code. There are no specific trainings on the Codes of Conduct; however, judges may attend bi-annual conferences where workshops/seminars are held on the Codes. Justices do not need to fill out income and asset declaration forms; however, there are disclosure reports for Justices to report on what they earn outside of their jobs. These forms are publicly accessible.

Under Article X of the Constitution, justices of the Supreme Court and judges of the National Court shall hold their offices during “good behavior.” The Chief Justice of the Palau Supreme Court is appointed by the President, acting on the advice of the Judicial Nominating Committee. A justice of the Supreme Court can be removed only for treason, bribery, or high crimes, or improper practices, or on the grounds of his or her inability to discharge his or her functions of office upon a vote of not less than two-thirds of the members of each house of the Olbiil Era Kelulau (s. 10, Art. X, Constitution).

The current judicial information system is Palau’s internal case management system.

In terms of transparency, all court proceedings and court judgments are open to the public except for sealed matters, such as juvenile matters. This information is available at the Supreme Court and via the Supreme Court’s website: <http://www.palausupremecourt.net/>. This information is accessed approximately 20 times per month.

During the country visit, Palau has indicated that there have been no examples of ethical dilemmas or corruption in the judiciary.

Paragraph 2 of article 11

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has implemented the provision under review.

In relation to Codes of Conduct and disciplinary mechanisms applicable to members of the prosecution service, the American Bar Association Rules of Professional Conduct are applicable, as are the Palau Bar Association Code of Conduct. More specifically, there is the Office Manual for the Attorney-General’s Office of 2014. This manual has not been updated since that time. This Manual contains a description of people’s jobs, practices to be engaged in to prosecute a case, functional tasks e.g. conflict of interest and so on. The Special Prosecutor is also bound by the American Bar Association Rules of Professional Conduct.

The Focal Point in the Attorney-General’s Office responsible for setting out standards on ethical behavior and providing guidance to prosecutors on ethical behavior, corruption risks, etc. is the Attorney-General. For the Office of the Special Prosecutor, this is the Special Prosecutor.

Measures aimed at increasing transparency and accountability in the selection, recruitment, training, performance management and removal of members of the prosecution service are contained in the Office Manual for the Attorney-General’s Office of 2014. The Office was restructured in 2014 to ensure greater transparency. There are now two branches, as had been noted above – civil and criminal. It is to be noted that In the Office, staff are contract employees. When posts are advertised, they are emailed out through the Palau Bar Association; the National District Attorney’s network of US is also used and sometimes the network of law schools. There are 3 interns coming in the summer of 2019.

In terms of trainings, the Office of the Attorney-General gets to benefit from Supreme Court trainings and there are also regional/US trainings. There is one-on-one induction training. In the Office of the Special Prosecutor, the investigators are sworn in police officers. There is a 6-monthly review of performance. On-the-job training is provided and investigators are trained.

In the Office of the Attorney-General, case assignment is based on individual skill-sets and experience. There is one lawyer who deals with all drug-related matters; another lawyer works on family violence matters; one lawyers a felony prosecutor (major matters). Cases assignments are tracked and divided evenly where possible among the staff. There is a database maintained by support staff with rough deadlines for prosecution: 90 days for a misdemeanor; 180 days for a felony; all matters are filed in 14 days.

Both the Office of the Attorney-General and Special Prosecutor are exempt from the income and asset declaration system. However, the Office Manual of the Attorney-General's Office provides for if conflicts of interest arise, whereby the Special Prosecutor can be consulted/used. In a civil matter, the Attorney-General represents the Executive Branch but there are agencies that are not in the Branch; special counsel represents these agencies.

(b) Observations on the implementation of the article

In Palau, the ABA Rules of Professional Conduct apply to prosecutors. These rules include codes of conduct and disciplinary mechanisms applicable to members of the prosecution service. In their respective offices, the Special Prosecutor and Attorney General set standards and provide guidance on ethical behavior and risks of corruption.

The Office of the Attorney General also has its own office manual, last updated in 2014, which addresses conflicts of interest. This manual aims to increase transparency and accountability regarding selection, recruitment, training, performance management and removal of members of the prosecution service. Members of the Office of the Attorney General receive one-on-one induction training and can benefit from Supreme Court trainings and regional/Us trainings. Case assignments are based on skill-sets and experience, and are tracked in a database.

The Special Prosecutor is bound by the ABA Rules. Investigators in the Office are sworn in police officers who receive bi-annual performance reviews.

During the country visit, it was provided that in the event of an ethics matter, the Ethics Tribunal can assign an investigator from the Palau Bar Association.

Article 12. Private sector

Paragraphs 1 and 2 of article 12

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honorable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has been partially implemented the provision under review.

The Penal Code has extensive provisions against commercial bribery, commercial fraud, and money laundering. In addition, 11 PNC, Chapter 100 sets for various prohibited activities that might be considered anti-trust provisions; however, violations of this section they only carry misdemeanor penalties.

The Foreign Investment Board (FIB) was established within the executive branch of the National Government by RPPL 3-34, which was later codified as PNC Title 28, The Foreign Investment Act (FIA). The duties and responsibilities of the FIB are as follows:

1. To review, evaluate and approve applications and proposals for Foreign Investment Approval Certificate (FIAC).
2. To monitor and enforce compliance with the terms and conditions of any issued FIAC.
3. To monitor, including spot inspection of business enterprises by the FIB, and enforce compliance with the provisions of the Foreign Investment Act (FIA)
4. To review the procedures and regulations of the FIB and advise the President on matters related to the implementation of the Act.
5. To submit annual report to the President and the O.E.K.
6. To undertake such other matters falling within the purview of FIA as may be entrusted by the President.

The FIB has seven (7) member appointed by the President with consent of the Senate. The term of office for members is three (3); and can be reappointed for further terms.

All corporations (national/foreign) are required to file annual financial reports to the Corporate Register (profit and non-profit), includes partnerships and churches. The Attorney-General's Office manages the Corporate Register. Failure to file for two years, can lead to the dissolving the corporation. The Office is developing the capacity to be the Corporate Register and to also verify information with the Tax Office.

The relevant provisions are as follows:

TITLE 12. BUSINESS ASSOCIATIONS

Chapter 1. Corporations

Subchapter I. General Provisions

§ 101. Authority of President to grant corporate charters and establish public corporations.

(a) The President may grant charters of incorporation for the establishment and functioning of business organizations, associations of persons for any lawful purpose other than pecuniary profit, cooperatives and credit unions.

(b) The President may create and establish public corporations subject to approval and consent of the Olbilil Era Kelulau.

§ 102. Scope and application of chapter; exceptions.

(a) The provisions of this chapter are applicable to every private corporation, profit or nonprofit, stock or non-stock, now existing or hereafter formed, and to the outstanding and future securities thereof, unless such corporation be expressly excepted from the operation thereof, or there be a special provision in relation to

any class thereof inconsistent with some provision of this chapter, in which case the special provision prevails.

(b) The existence of corporations heretofore formed or existing shall not be affected by the enactment of this chapter, nor by any change in the requirements for the formation of corporations, nor by amendment or repeal of the laws under which they were formed or created.

§ 103. Application for charter.

(a) An association of persons seeking a charter as a corporation shall submit for the approval of the President articles of incorporation which shall provide at least the following information:

- (1) proposed name of the corporation;
- (2) principal office or place of business;
- (3) proposed duration;
- (4) purposes;
- (5) powers;
- (6) capitalization;
- (7) names of incorporators;
- (8) number of directors, which shall be not less than three, and proposed officers;
- (9) names of directors and officers to serve until first election;
- (10) provisions for management, if any;
- (11) provisions for voting by members;
- (12) provisions for shareholding, if any;
- (13) disposition of financial surplus;
- (14) provisions for liquidation;
- (15) provisions for amendment of articles of incorporation.

(b) In addition to articles of incorporation, persons seeking a charter as a corporation shall submit for the approval of the President proposed bylaws governing the operation of the corporation.

§ 104. Audits and inspections authorized.

(a) The President may appoint officers to audit and report on the accounts of corporations authorized to do business within the Republic. Such officers shall have the right at any and all times to inspect, examine and audit the books and accounts of such corporations.

(b) Any member of a nonprofit corporation shall have the right to inspect and examine the books and accounts of the corporation of which he is a member, provided that such inspection and examination shall be held at the place where such books and accounts are normally kept, and shall take place on weekdays during normal business hours in such a manner as not to interfere with usual conduct of business or corporate affairs.

Subchapter II. Registrar of Corporations

§ 121. Office created; duties.

There shall be in the Office of the Attorney General a Registrar of Corporations appointed by the President. The Registrar shall issue, receive, and hold as custodian all certificates, papers, statements, or other records or documents required by the provisions of this title or the rules or regulations promulgated hereunder to be distributed by, or filed with the national government. In addition, the Registrar shall perform such other duties as may from time to time be assigned to him by the President or the Attorney General.

§ 122. Authority to promulgate rules and regulations.

The Registrar, with the approval of the Attorney General and the President, shall have the power to prescribe such rules and regulations as are deemed advisable to administer and carry into effect the provisions of this title. Such rules and regulations shall have the force and effect of law. The Registrar shall file a copy of such rules and regulations with the Clerk of Courts.

§ 123. Power to convene corporate meeting.

The Registrar may, when he deems it in the public interest, convene a special meeting of the members, board of directors, or officers of any corporation organized or existing under the provisions of this title, by giving notice, not less than ten (10) days prior to the date of such meeting, to the members, directors, or officers, as the case might be. Such notice shall state the purpose of the meeting and the subject or subjects to be discussed.

§ 124. Power to order production of records; penalty.

(a) In connection with the duties prescribed in this chapter the Registrar is authorized and empowered to order the production of books of account, papers and documents of any corporation or company authorized to do business within the Republic.

(b) Refusal, without a showing of good cause, to produce books of account, papers or documents within thirty (30) days after an order for the production thereof shall be a misdemeanor punishable by a maximum fine of fifty dollars (\$50), or, when the order is directed to an individual, imprisonment of such individual for a period not to exceed ninety (90) days, or both.

Audits are conducted on a parent company, Bank, Federal or other contributions to which the donor/companies require audit report/ records.

Audits on private businesses is done on an individual basis.

The Tax Office also requires compliance.

Specifically in relation to sub-paragraph 1 (a) of article 12, cooperation between law enforcement agencies to prevent corruption is being promoted through:

- Legislative provision of Protection of whistleblowers clause under 40 PNCA Section 271 for citizens reporting complaints or giving information to the Public Auditor.
- Establishment of Police Practices Committee established by the Bureau of Public Safety.
- Enactment of the Open Government Act.

Specifically in relation to sub-paragraph 1 (b) of article 12, the Chamber of Commerce has a Code of Conduct. If one of the Board Members is running for Senate/ Congress, there is a cooling off period. There are no requirements on integrity of Board Members.

Title 11 PNC Business and Business Regulations

Chapter 1- unfair business practices

Chapter 2-consumer protection

Specifically in relation to sub-paragraph 1 (c) of article 12, Title 12 PNC has been enacted to incorporate corporations, associations and businesses. The Chamber of Commerce is seeking to find out who the natural person is behind the legal entity. On the corporate registry, there is a regulation on information on natural and legal persons, but not a regulation on criminal records. Persons can have access to the corporate registry, including law enforcement but only in person. What is required is a letter to the Register of Corporations, which is currently the Office of the Attorney-General.

The Foreign Investment Board is the body that provides the approval certificate for foreigners to invest.

Regulations Implementing the Foreign Investment Act, 28 PNC Section 1010 et seq.

Chapter 1. Administration and Enforcement

Part 1: General provisions

Section 1: Purpose.

The Foreign Investment Board seeks in its implementation, administration and enforcement of the Foreign Investment Act, 28 PNC Section 101 et seq., to encourage investment in the Republic by non-citizen persons and business enterprises at a rate and on terms that will benefit the people of the Republic and maximize

their opportunities to participate fully in the economic growth resulting from such investment. These regulations are promulgated to carry out the purposes of the Foreign Investment Act, which is intended to attract to the Republic significant foreign investment and foreign business activities that will provide meaningful employment opportunities for Palauan citizens. These regulations also are promulgated to clarify the enforcement mechanisms of the Foreign Investment Act which are intended, at least in part, to prevent circumvention of the law by persons "acting as fronts for foreigners who seek to avoid the scrutiny of the [Foreign Investment] Board." See Stand. Com. Rep. No. 3-131, April 10, 1990 at 2. Finally, these regulations set forth certain procedures required of the Foreign Investment Board by the Administrative Procedures Act, 6 PNC Section 101 et seq.

Specifically in relation to sub-paragraph 1 (d) of article 12, Palau has in place the following legislation:

- Title 40 PNCA Chapter 15 Section 1501-1505 which contain provisions for business licenses and regulations: -
 - 40 PNC Section 1501: Any person engaging in business in the Republic of Palau shall, as condition precedent to engaging or continuing to engage in business, obtain from the Director (Director of the Bureau of Revenue, Customs and Taxation in the Ministry of Finance) a license to engage in business.
 - 40 PNC Section 1503: Any person who operates two or more businesses in the Republic shall obtain separate license for each business.
 - 40 PNC Section 1505: The Director may revoke or suspend any license issued under this chapter upon finding that a taxpayer has not paid taxes due or otherwise violated any provision or regulations issued pursuant to this division.
- Title 11 PNC Business and Business Regulations - Chapter 5 – Sales licenses, Chapter 9- Tour Operators, Chapter 10-Alcohol beverages,
- Title 28 PNC Chapter 6 - statutory provisions of duty-free concessions
- Title 34 PNC Chapter 52, sub-chapter III - statutory provisions on the sale of compressed air or underwater breathing equipment.

Specifically in relation to sub-paragraph 1 (e) of article 12, preventive measures put in place and consistent with these requirements are as follows:

40 PNC § 658. Restrictions on employment of present and former employees.

(a) It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become an employee of a person contracting with the employee's government agency within a year after the award of the contract or the cancellation of invitation for bids.

(b) It shall be a breach of ethical standards for any former employee knowingly to act as a principal or as an agent for any person, other than the government, in connection with any judicial or other legal proceeding, request for a ruling or other determination, claim, charge, or controversy regarding a procurement action in which the employee participated personally and substantially through decision, approval, disapproval, or recommendation.

(c) It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal or as an agent for anyone other than the government in connection with any judicial or other legal proceedings, or contract claim, or charge or controversy in which the employee either participates personally and substantially through decision approval, disapproval, recommendation, the rendering of advice or otherwise.

40 PNCA § 1804. Prohibited employment.

The Director and every employee of the Bureau of Revenue, Customs and Taxation³ while in such employment and for three (3) years following termination of such employment may not act as a tax accountant or consultant for a fee or accept employment from any person preparing tax returns required by this division.

³ Development after the country visit: the authorities of Palau indicated that the entity no longer existed in this form, but that it had been replaced by the Bureau of Revenue and Taxation and the Bureau of Customs and Border Protection.

The Palau Chamber of Commerce has a Memorandum of Understanding with the Ministry of Finance (Economic Advisory Group) and has held public forums together (e.g. on food security, tourism policies, labour issues); there are also monthly membership meetings.

There is no formal process in place in relation to conflicts of interest – a person can hold both a public service position and can work in the private sector as long as there is no conflict, which would otherwise need to be disclosed; the conflict would be reported to the person’s supervisor.

(b) Observations on the implementation of the article

The Penal Code has provisions against commercial bribery, commercial fraud, and money laundering. 11 PNC Chapter 100 anti-trust like provisions, but these charges are only misdemeanors. Foreign investments are covered by the Foreign Investment Act. Audits are conducted on parent companies. For subparagraph (a), Title 12 of the Palau National Code (Business Associations) requires all corporations, profit or non-profit, stock or non-stock, to maintain certain records (s. 124). The President may appoint officers to audit and report on the accounts of corporations authorized to do business within the Republic (s. 104). The Register of Corporations is in the Office of the Attorney General. For subparagraph (b), Palau cited the Code of Conduct of the Chamber of Commerce and PNC Business and Business Regulations. For subparagraph (c), in order for the articles of incorporation of a corporation to be approved, the identity of incorporators, directors and proposed officers needs to be provided (s. 103(a)). For subparagraph (d), Title 40 of the PNC contains provisions addressing business licenses, including penalties for violations (ss. 1501-1505). Under § 1505, the Director may revoke or suspend licenses based on a taxpayer not having paid taxes or having violated other provisions or regulations. Palau also cited Title 11 PNC on Business and Business Regulations. Foreign investments are covered by the Foreign Investment Act, Title 28 PNC, and the responsibility of the Foreign Investment Board. For subparagraph (e), section 658 places restrictions on the employment of present and future government employees who participated in procurement processes for the government. Also, 40 PNCA, section 1804 prohibits the Director and every employee of the Bureau of Revenue, Customs and Taxation from acting as a tax accountant or consultant for a person filing a return under this division for three years after leaving such employment. There is currently no formal process in place in relation to conflicts of interest. A person may hold a public service position and work in the private sector, but disclosures may need to be made to a person’s supervisor. Information was not provided for subparagraph (f).

During the country visit, it was provided that there is no restriction on the number of licenses that can be received for commercial activities. However, business licenses need to be renewed annually (the year commences on 1 January until 31 December), which includes a police clearance and financial proof of sustainability. It remained unclear on when tax can be waived e.g. for charities, faith-based organizations and there seems to be a degree of “discretion” that can be exercised by the Tax Office, which remained unclear to the reviewers.

The reviewers recommended that Palau enhance existing anti-corruption measures in the private sector, including accounting and auditing standards and cooperation with law enforcement, and establish adequate penalties for non-compliance.

Paragraph 3 of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;*
- (b) The making of off-the-books or inadequately identified transactions;*
- (c) The recording of non-existent expenditure;*
- (d) The entry of liabilities with incorrect identification of their objects;*
- (e) The use of false documents;*
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.*

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has partially implemented the provision under review.

40 PNC § 1601. Records of transactions.

Every person, firm, corporation or association engaging in any transaction subject to a tax, fee or charge levied or imposed under this division shall keep a full and accurate record of each such transaction engaged in by him and such record shall be available for examination by the Director or his authorized representative for at least three years after the date of such transaction. Every business shall keep the following:

(a) a daily record of all cash receipts showing the date, total cash receipts, cash sales, payments on accounts receivable and miscellaneous receipts. Supporting documents comprised of cash register tapes, sales, slips, receipts, and other documents relating to cash received shall be retained in chronological sequence for examination.

(b) a daily record of credit sales showing, date, name of purchaser, invoice/receipt number, amount, and discount (if applicable). Supporting documents consisting of sales invoices or receipts shall be retained in chronological sequence for examination.

(c) a daily record of each disbursements showing date, payee, invoice number, amount discount (if applicable), and purpose of payment. Supporting documents consisting of cancelled checks, receipts, invoices, or other evidence of cash disbursed shall be maintained in chronological sequence for examination.

(d) such other records as the Director may require.

Sanctions:

NCA § 1703. Business license revocation.

The Director in his discretion may suspend or revoke any business license upon a taxpayer's failure to comply with this division or regulations issued hereunder. The Director, under this section, is not subject to the provisions of the Administrative Procedure Act of chapter 1 of Title 6 of this Code.

40 NCA § 1704. General penalty.

Any person who willfully violates any of the provisions of this division for which there is no other designated penalty, or any rule or regulations issued hereunder, shall, upon conviction, be imprisoned for a period of not more than one (1) year, fined not more than one thousand dollars (\$1,000), or both.

17 PNC § 2903. Falsifying business records.

(a) A person commits the offense of falsifying business records if, with intent to defraud, the person:

(1) Makes or causes a false entry in the business records of an enterprise; or

(2) Alters, erases, obliterates, deletes, removes, or destroys a true entry in the business records of an enterprise; or

(3) Omits to make a true entry in the business records of an enterprise in violation of a duty to do so that the person knows to be imposed upon the person by law, other than for the information of the government, or by the nature of the person's position; or

(4) Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

(b) "Enterprise" means any entity of one or more persons, corporate or otherwise, engaged in business, commercial, professional, industrial, charitable, or social activity.

(c) "Business record" means any writing or article kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity.

(d) Falsifying business records is a misdemeanor.

In the *Chamber of Commerce vs Congress* case, Congress sought to increase their official expenses during their term, this was challenged by the Chamber that won. Congress had to pay back the money that had been used.

Other relevant provision includes:

17 PNC § 2802. Forgery in the first degree.

(a) A person commits the offense of forgery in the first degree if, with intent to defraud, the person falsely makes, completes, endorses, or alters a written instrument, or utters a forged instrument, or fraudulently encodes the magnetic ink character recognition numbers, which is or purports to be, or which is calculated to become or to represent if completed:

(1) Part of an issue of stamps, securities, or other valuable instruments issued by a government or governmental agency; or

(2) Part of an issue of stock, bonds, or other instruments representing interests in or claims against a corporate or other organization or its property.

(b) Forgery in the first degree is a class B felony.

17 PNC § 2803. Forgery in the second degree.

(a) A person commits the offense of forgery in the second degree if, with intent to defraud, the person falsely makes, completes, endorses, or alters a written instrument, or utters a forged instrument, or fraudulently encodes the magnetic ink character recognition numbers, which is or purports to be, or which is calculated to become or to represent if completed, a deed, will, codicil, contract, assignment, commercial instrument, or other instrument that does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status.

(b) Forgery in the second degree is a class C felony.

17 PNC § 2804. Forgery in the third degree.

(a) A person commits the offense of forgery in the third degree if, with intent to defraud, the person falsely makes, completes, endorses, or alters a written instrument, or utters a forged instrument.

(b) Forgery in the third degree is a misdemeanor.

(b) Observations on the implementation of the article

The Republic requires every person, firm, corporation or association to keep a record of transactions that follow certain informational requirements to be available for examination by the Director under 40 PNC, section 1601. Violations of these public transaction laws may result in business license revocation and penalties, including imprisonment and/or a fine.

The recording of non-existent expenditure, the entry of liabilities with incorrect identification of their objects, the use of false documentation and the intentional destruction of bookkeeping documents are all prohibited under section 2902 on falsifying business records of the Palau National Code, if the acts are committed with the intent to defraud, while forgery is covered in section 1501.

The reviewers recommended that Palau take measures regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards in line with paragraph 3 of article 12.

Paragraph 4 of article 12

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has not implemented the provision under review.

There is no provision under the Palauan legislation for tax deductibility of expenses that constitute bribes; there is also no such policy or practice.

(b) Observations on the implementation of the article

It was noted that Palau does not explicitly disallow the tax deductibility of expenses that constitute bribes. It was therefore recommended that Palau take measures to disallow the tax deductibility of expenses that constitute bribes (art. 12(4)).

Article 13. Participation of society

Paragraph 1 of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;*
- (b) Ensuring that the public has effective access to information*
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;*
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:*
 - (i) For respect of the rights or reputations of others;*
 - (ii) For the protection of national security or order public or of public health or morals.*

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has implemented the provision under review.

In relation to subparagraph (a)

There are public hearings by legislative bodies on Bills e.g. the Chamber send Bills for commentary. The President delivers a weekly press conference that is also televised and on the radio. There are radio programmes that inform the public of Bills/ areas of public concern to be addressed. Forums and workshops are also held on given issues (e.g. Money Laundering Workshop, facilitated by the United Nations Pacific Regional Anti-Corruption Project was held on 2-4 April 2019). It was noted that it would be ideal to solicit comments from the public on draft Bills. There are public hearings on the Bills, but it can also depend on the representative. There are examples cited of where Bills solicited comments from certain groups. All cases are open except for juvenile cases.

In relation to subparagraph (b)

Relevant provisions are contained in the Administrative Procedure Act, Title 6 PNC –Sections 122, 125, 128) and the Open Government Act 2013- Sections 2, Section 6-9 and Sections12-13 (See: UNCAC article 10). However, there is not one designated body; the Office of the Attorney-General is the default designated authority but it may further develop this through a series of opinions.

The Open Government Act allows any member of the public to obtain official records and reports, and provides legal remedies for a requesting party, if their request is denied by filing an Act violation with the Palau Supreme Court.

40 PNC 662 (b) allows any Palauan citizen to bring an action against a public official or any person violating the Procurement Code, and any taxpayer may bring an action against any public official that causes expenditures in excess of the amount allocated to a government account, or any public official who takes action against and employee who refuses to over expend an account.

40 PNC 271 prevents the Public Auditor from disclosing the identity of anyone who reports on governmental misconduct in relation to public funds without their written consent, unless disclosure is necessary and unavoidable.

The services of the Public Defender's Office are used, as may be indicated on the serving document (e.g. if legal aid is required, then the services of the Public Defender's Office are available). The Office does outreach through a youth services team and radio programmes. There are two attorneys, one investigator and two administrative staff, and they handle about 98% of criminal cases (13,000 cases per year). There are no guidelines on who can access their services (e.g. there is income threshold).

In relation to the costs to receive information, the Judiciary and the Office of the Attorney-General do not charge a fee. However, the Judiciary would charge a cost (25 cents per page) to have documents copied or burnt onto a CD.

There are time limits prescribed in the Open Government Act (10 days). However, for the Judiciary, it would depend on the request; the file would be looked for straight away, if on-site. It would take 24 hours for a CD (maximum is a few days, especially if the file is at the capital and needs to be transported) to be burnt. The service is also open to foreigners; therefore, there are no restrictions on access to information.

Requests for information from the public may be denied. The Judiciary noted that if it is in the public interest for information not to be released, then the request would be denied; this would be for sealed matters, such as juvenile cases.

There is the right to apply for a review or an appeal of a decision denying access to information by applying to be heard before a Justice.

In the Judiciary, the clerks of the courts are responsible (also work during lunch hours) for administering the access to information requests.

Through radio awareness, the public is informed on how to access information.

In relation to subparagraph (c)

Palau undertakes specific public information activities that contribute to non-tolerance of corruption by the Office of the Special Prosecutor. The Special Prosecutor has been active by going out to the different States (already 11 States), into the local communities, using the radio and having her website updated (<https://www.palauosp.org/>).

The Public Defender's Office does outreach through a youth services team and radio programmes. There is also a Women's Conference that was held on culture and character-building.

Different ministries and government offices conduct their own awareness-raising trainings and campaigns. For example, the Ministry of Education, after a regional education workshop on anti-corruption integration with the United Nations Pacific Regional Anti-Corruption Project in December 2018, provided each social science class in public high schools with an anti-corruption book, "Idyllic No More: Pacific Island Climate, Corruption and Development" by Gif Johnson, a Marshallese author.

The Attorney-General teaches at the Police Academy and corruption has been discussed on the radio and an Anti-Corruption Workshop for NGOs was held in February 2015 as part of the United Nations Pacific Regional Anti-Corruption Project, together with the Ombudsman of Palau. There was also a training in 2017 by Project to the police cadets at the Policy Academy.

In relation to subparagraph (d)

Protection and respect for privacy is provided for in sections 5 and 14 of the Open Government Act 2013.

On a small island, information available is readily disseminated through informal networks, also through the use of radio. There are also formal avenues taken, such as the Judiciary disseminating information on its events or high-profile cases through press releases; their website is also systematically updated.

See the open and public meetings provisions under the Open Government Act, as per UNCAC article 10 above.

(b) Observations on the implementation of the article

The reviewers noted the ongoing efforts of the Government to promote the active participation of individuals and groups outside the public sector, varying from the broadcasting of when open government meetings will be held, to the Special Prosecutor actively raising awareness on the existence, causes and gravity of corruption through different mediums. The reviewers were also informed of the celebrations on International Anti-Corruption Day in previous years. The Open Government Act provides for access to information, but its limitations were cited above and a recommendation made by the reviewers under UNCAC article 10. The reviewers noted the initiative taken by the Ministry of Education to ensure that each social science class in public high schools in Palau have a copy of the anti-corruption book, “Idyllic No More: Pacific Island Climate, Corruption and Development”. During the country visit, the role of the media was also highlighted and their reporting of acts of corruption.

Paragraph 2 of article 13

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has implemented the provision under review.

Palau’s protection of whistleblowers under the Public Auditor Act:

§ 271. Protection of whistleblowers.

(a) The Public Auditor may receive and investigate complaints or information from any person concerning the possible existence of any activity constituting fraud, waste and abuse in the collection and expenditure of public funds.

(b) The Public Auditor shall not, after receipt of a complaint or information from a person, disclose the identity of the person without the written consent of the person, unless the Public Auditor determines the disclosure is necessary and unavoidable during the course of the investigation. In that event, the person shall be notified in writing prior to the disclosure.

(c) Any person who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any person as reprisal for making any complaint or disclosing any information to the Public Auditor, unless the complaint made, or the information disclosed was with actual knowledge that it was false or with willful disregard for its truth or falsity

§ 273 of 40 PNCA (Public Auditor Act)

(a) Confidential or proprietary records or information disclosed to the Public Auditor shall be subject to the same legal confidentiality and protective restrictions in the Office of the Public Auditor as those records and information have in the hands of the official authorized custodian. Any penalties applicable to the officially authorized custodian or his employees for the violation of any confidentiality or protective restrictions applicable to those records or information shall also apply to the employees and agents of the Office of the Public Auditor.

(b) The Office of the Public Auditor may not publish any confidential or proprietary information or records in any report, including data and statistics, if that information as published is directly matchable to any individual

Protection under Section 3320 (e), and (f) of 17 PNC (Penal Code of Palau)

(e) Except for the purpose of the due administration of this Law, no person shall disclose any information that will identify or is likely to identify the person who prepared or made a report made in accordance with the provisions of this Chapter, or handled the underlying transaction.

(f) No person shall be required to disclose a report made in accordance with the provisions of this Chapter or any information contained in such a report or provided in connection with it, or the identity of the person preparing or making such report or handling the underlying transaction in any judicial proceeding unless the judge is satisfied that the disclosure of the information is necessary in the interests of justice.

Channels of reporting:

- **Reporting Money Laundering and Proceeds of Crime: by confidential communication in writing or telephone to FIU- Section 20 (b) 17 PNC (MLPCA 2001):-**

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.

[However, it was noted that this must be in writing to be actioned.]

- **Powers to summon persons to testify under Section 276 of 40 PNCA (Public Auditor Act) and subsequent referrals by Public Auditor to the Attorney General.**

(a) Whenever the Public Auditor has a reasonable basis for believing that a person has information with respect to any matter which is within the Public Auditor's jurisdiction to investigate, he may require by summons the attendance and testimony under oath of the person.

- **Press freedom and protection**

Section 2. Article IV of the Constitution:

The government shall take no action to deny or impair the freedom of expression or press. No bona fide reporter may be required by the government to divulge or be jailed for refusal to divulge information obtained in the course of a professional investigation.

On a small island, information available is readily disseminated through informal networks, also through the use of radio. Through these networks, the majority of the population on the main island are aware of what the different institutions do and how they are to be accessed. However, it was acknowledged that this awareness could increase.

(b) Observations on the implementation of the article

In addition to the above, a person can anonymously report on the websites of the Office of the Special Prosecutor: <https://www.palauosp.org/> and the Office of the Public Auditor: <http://www.palauopa.org/>. However, complaints can also be reported by telephone, email and in person, also anonymously.

(c) Successes and good practices

The reviewers commended the length to which the Office of the Special Prosecutor has sought to make it easy, accessible and simple, including anonymously, to report acts of corruption (be it through the website, in person, writing, text or telephone), coupled with the Office's active advocacy in the community to ensure that the public is aware of this service.

Article 14. Measures to prevent money-laundering

Subparagraph 1 (a) of article 14

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(a) Summary of information relevant to reviewing the implementation of the article

Palau's Financial Institutions Act (FIA) Section 1013(b) designates the Financial Institutions Commission (FIC) as the supervisor for the financial sector (FIs, which are defined by the FIA Section 1001(a) including banks, securities brokers, and securities dealers). Money for Value Transfer Services (MVTS) are not included in the FIA definition of FIs, however they are covered by the newly enacted FIU Regulations for FIs and are supervised by the FIU. MVTS providers are required to be subject to monitoring for Anti-Money Laundering Act (Act) compliance by both the Anti-Money Laundering Act (§3328 b (1)) and by FIU Regulation for FIs.

The FIA do not allow criminals and their associates to hold controlling interests or management positions in FIs (FIA, Section 1058 (3)). For this purpose, the FIC requires all domestic banks to submit lists of all shareholders, directors and administrators and for foreign banks, to list shareholders having control over 20% of outstanding shares, administrators of local branches to report annually or when change occurs. Section 3328 (b (3)) of the FIA and the Act empowers FIC and FIU to establish and apply fit and proper criteria for owning, controlling, or participating, directly or indirectly, in the directorship, management or operation of financial institutions.

The Act designates both FIC and FIU as the supervisory and regulatory authority for FIs. The FIU issued the FIs Regulations in 2017 which provide the minimum requirements for the management of ML/TF risk. The FIU Regulations require all FIs (licensed institutions) and MVTS to implement a comprehensive ML/TF risk management framework in line with the requirements of the Act and FIA. Sanctions can be imposed for failure to comply with the Act or the FIA, the FIC and/or FIU may impose any one or more of the remedial measures or penalties provided in the Act and the FIA. The FIU's FIs Regulation applies a risk-based approach to supervising compliance with these requirements.

FIA Act Article 1075(6) requires that every FI shall prepare and maintain at its head office written records containing records showing, for each customer, on a daily basis, particulars of its transactions with or for the account of that customer, and the balance owing to or by that customer. Section 17 PNCA §3326b (1 and 2) requires records to be maintained for not less than 5 years after a business relationship has ended and not less than 5 years after a transaction. 17 PNCA §3326b (1 and 2) requires records to be maintained for not less than 5 years after a business relationship has ended and not less than 5 years after a transaction. Article 3326(a) and (b)(2) of AMLA requires that FIs shall maintain all books and records with customers and transactions, and records on transactions shall be sufficient to reconstruct each transaction for both account holders and non-account holders. Article 3326(a) of the Act requires that FIs maintain all books and records with respect to their customers and transactions and shall ensure that such records and the underlying information are available on a timely basis to the FIU, the FIC and other competent authorities.

26 PNCA Chapter 10 § 1062 of the FIA and Section 3314 of the Act requires financial institutions to report suspicious transactions and provides the legal basis for FIs and their respective directors, principals, officers, partners, professionals and employees to make a report to the FIU if they suspect or have reasonable grounds to suspect that a transaction involves property that is the proceeds of crime or linked to or is to be used for a terrorism offense. Section 3.1.1 of the FIU Regulation for FIs outlines the information that must be reported to the FIU. All suspicious funds and transactions, including attempted transactions, and all suspicious information including information relating to terrorist groups must be reported to the FIU.

The FIU Regulation for FIs, which was enacted in November 2017, requires reporting of suspicious transactions by a FI due to section 3314 of the Act and the FIA. Within the Act it notes that attention should be paid to transactions or unusual patterns of transactions “which have no apparent or visible economic or lawful purpose”. The FIA applies a more comprehensive definition (Section 1062 a) which meets the FATF requirements. The remittance services are in effect the only financial sector that has the ACT as its legislative base rather than the FIA, and since they are very small and have an upper limit of USD1500 per transaction, is not of significant concern.

Section 3321 of the Act requires a FI to report to the FIU where it suspects or has reasonable grounds to suspect that a transaction or attempted transaction involves property that is the proceeds of crime; that is related or linked to or is to be used for a terrorism offense or a terrorist act, by a terrorist, or terrorist organization, or by those who finance terrorism as such terms are defined in 17 PNC Chapter 22.4 “Proceeds of Crime” or “proceeds” is defined broadly and means any property or economic advantage derived from or obtained, directly or indirectly, wholly or partially, through the commission of an offense, including economic gains from the property and property converted or transformed, in full or in part, into other property.

In section 3.1.1 of the FIU Regulations for FIs (including MVTS), all suspicious funds and transactions including attempted transactions and all suspicious information should be reported, regardless of the amount of the transaction.

The Palau FIU was established in 2003. In 2014, an amendment was made to the Act which continues to provide for the legal basis of the existence of the Unit. Chapter 33 of the Act, Section 3331 provides for the legal basis for the establishment and existence of the FIU and states that the FIU shall be an independent agency responsible for receiving, analysing, investigating and disseminating information concerning suspected proceeds of crime and terrorist property. Section 3334 sets out the FIU’s powers, duties and obligations in more detail. These include the responsibility to receive, analyse, investigate and disseminate information concerning suspected proceeds of crime and terrorist properties.

The Palau FIU serves as the central agency for the receipt of disclosures filed by reporting entities as provided for by the Act. These include STRs reported by FIs and DNFBPs under Section 3321, and currency transaction reports above \$10,000 whether conducted as a single transaction or several transactions that appear to be linked, submitted under Section 3321. As noted above, Section 3331 (b) of the Act states that the FIU is to be an independent agency responsible for receiving, analysing and dissemination to relevant LEAs information concerning suspected proceeds of crime and terrorism property. The AML/CFT regulation 01 for the Banks, Section 3.1.1 (a) requires all banks to furnish the FIU with all suspicious funds and transactions including attempted transactions and all suspicious information. AML/CFT regulation 02 for DNFBPs, Part IV, 1.1 also requires DNFBPs to provide to the FIU information on suspicious transactions or that which are suspecting to be related to money laundering or terrorist financing. Reporting of other kinds of reports such as the cash transactions reports are contained both in the AML regulation 1 for the banks and regulation 2 for the DNFBPs. It is stated in the regulations that cash transactions of USD 10,000 or above or its equivalent in foreign currency, the value of which singularly, or in several operations that appear to be linked equal to USD 10,000, must be reported to the FIU. AMLPCA Section 3322 (a), AML regulation 01, chapter 3.2.1, AML regulation 02, part IV, 1.1.1 (b). The FIU is also meant to get a copy of all cross-border declarations from Customs, of physical cash and negotiable instruments carried into and out of Palau. MLPCA chap. 36, 17 PNCA, s.3603 (b).

The Palau FIU has very broad powers under the Act to obtain additional information from private and public sector entities. Under Section 3333 of the Act, the FIU can obtain additional information related to any reported financial transaction or information filed by any FI, can make inquiries with or obtain from any FI any additional information the FIU thinks is necessary to carry out its functions, regardless of whether the requested person has made a report and can enter the premises of any FI or DNFBP to inspect any records kept pursuant to the FIA and or the Act and that are necessary to the fulfilment of the FIU’s functions.

Section 3334 of the Act provides the legal basis for the FIU to conduct research into and compile and provide information and statistics on trends and developments on money laundering and financing of terrorism. It also provides for the legal basis for Palau to recommend ways to detect, prevent and deter money laundering and terrorism financing activities. With these powers and functions, the FIU is open to utilize variety of tools

⁴ While section 3320 is entitled “Reporting of suspected terrorism”, in fact the reporting obligation extends to reporting of transactions relating to any serious offence,

to carry out its analysis function on the reports it receives. The Palau FIU can use its wider power to perform its functions, especially to carry out operational and strategic analysis. It has the power to request additional information from reporting entities on the information and reports it had already received as contained in the Act, subchapter IV, s. 3334 (a). Also, the FIU has the power to request information from the private and public sectors and as well as from Government agencies that may hold relevant information such as Bureau of Revenue, Customs and Taxation, Bureau of Public Safety, Office of the Attorney General or other competent supervisory authorities. subchapter IV, s.3334, (e). Palau has actually analysed some STRs and disseminated analysed reports to relevant LEAs.

Revisions were made to the Act in 2014 specifically to establish the FIU as an autonomous body with the authority to carry out its functions freely. Section 3331(b) of the Act provides the legal basis for the Palau FIU to be an independent agency responsible for receiving, analysing, investigating and disseminating information concerning suspected proceeds of crime and terrorist property, as provided for under the Act. Section 3332 of the Act provides for the appointment of a Director of the FIU by the Governing Board of the Financial Institutions Commission on such terms and conditions as the Board may determine in consultation with the Money Laundering Working Group (MLWG). Under Section 3332 (a), the Director may exercise all of the functions, powers and duties of the FIU, and Section 3332(c) empowers the Director to appoint such other officers and employees of the FIU as are necessary for the efficient exercise of the duties, functions and powers of the FIU. The powers, functions and duties of the FIU set out under Section 3334 of the Act include the power to enter into arrangements with domestic or foreign competent authorities. Section 3334 (q) and (u) also provide the legal basis for the Palau FIU to cooperate and share information with other domestic and foreign competent authorities respectively. Section 3336 of the Act states that the FIU shall be responsible for its own budget to be determined by the Director of the FIU. Though the Palau FIU has the legal basis to be an autonomous agency, it has to be proven in the way it carries out its operation and the allocation of resources made available for it to carry out its operations.

According to the Act, the FIA and the FIU FI Regulations, FIs are required to complete strict CDD, EDD and KYC obligations, including the identification of the “beneficial owner.”

Palau’s NRA rated vulnerability of sectors to ML/TF risk

Financial Institutions	Vulnerability rating
Banks	High
Credit unions	Low
Insurance intermediaries or brokers	Low
Money remittance companies/Alternative remittance service (ARS)	Medium
Portfolio Management	Low
Credit Card/Debit Card Issuers	Low
Finance companies (money lenders)	Not rated in NRA
DNFBPs	Vulnerability rating
Real estate agents	High
Dealers in high value assets (cars and boats)	High
Lawyers/other legal profession (including licensed notaries)	Medium
Dealers in precious metals/precious stones (jewellery shops)	Low
Accountants (Auditors)	Low

Palau’s financial sector: institution types and number

Financial Sector Institution Type	Number of institutions
Banks	5
Credit unions	6
Insurance intermediaries or brokers	5
Money remittance companies/Alternative remittance service (ARS)	7
Finance companies (money lenders)	12
Portfolio Management	0

Credit Card/Debit Card Issuers	Debit cards (3 international banks) and credit cards (one international bank)
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Palau's financial sector: licensing, registration and assets

Financial Sector Institution Type	Licensed / registered institutions	Unlicensed institutions	% of financial sector assets *
Banks	5		98-99
Domestic	2		
Foreign branches	3		
Credit unions	0	6	
Insurance intermediaries or brokers	5		
Money remittance companies/Alternative remittance service (ARS)	0	7	
Finance companies (money lenders)	12		
Portfolio Management	0		
Credit Card/Debit Card Issuers	Debit cards (3 major banks) and credit cards (one international bank)		

* The remaining sectors hold approximately 1-2% of the sector assets, split across these sectors.

Currency Transaction Report and Suspicious Transaction Report filed 2015-2017

Transaction/Report Type	2015	2016	2017	Total
STR	97	104	103	148
CTR	966	3251	3307	7524
Border currency report (BCR)	23	40	30	93

Intelligence/Information reports 2013 – 2017

Intelligence/Information report type	2013 - 15	2016	2017
Case Dissemination Reports (case reports on STRs and CTRs received)	2	3	7

Table 12: Currency Report

Description	2017	2016	2015
Declared	30	40	23
Declared Amount	USD1,855,626 ⁵	USD2,629,677	USD1,530,892
Undeclared	20	49	47
Undeclared Amount	USD239,496	USD768,080	USD829,359

Amount of Penalties imposed	USD9,848	USD35,345	USD66,408
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List of FIC's on-site compliance examinations for AML/CFT

Year	Financial Institution – NB all are Banks (5)	Scope of supervision*	Composite score	AML score	Regulatory Response Notes
2010	Bank 1	LS	3	2	letter to the bank Board
2011	Bank 3	LS	2	2	letter to the bank Board
2012	Bank 2	BFS	1	1	letter to the bank Board
2013	Bank 3	BFS	2	2	letter to the bank Board
2014	Bank 2	BFS	1	1	letter to the bank Board
2015	Bank 1	LS	1	1	letter to the bank Board
	Bank 3	LS	2	1	letter to the bank Board
	Bank 5	FS	2	2	Commitment Letter
2016	Bank 2	LS	1	1	letter to the bank Board
	Bank 5	LS	2	2	Memorandum of Understanding; FIC Board approved Corrective Order and Monetary Penalty proposed but ended up not happening
	Bank 4	LS	3	3	Memorandum of Understanding
	Bank 4	FS	3	3	Memorandum of Understanding
2017	Bank 4	LS	3	3	Proposed Corrective Order and Monetary Penalty, NO FIC BOARD QUORUM=INACTION, ROE and Regulatory Response never delivered to the bank
	Bank 3	LS	2	1	letter to the bank Board

* FS=Full Scope; LS=Limited Scope; BFS=Branch Full Scope.

(b) Observations on the implementation of the article

The Money Laundering and Proceeds of Crime Act (MLPCA) codified in title 17 PNC chapter 33, the Financial Institutions Act (26 PNC chapter 10) and relevant FIU regulations establish the legal and institutional framework to prevent money laundering in Palau. These provisions require reporting entities, such as financial institutions (except credit unions), money remittance service providers (MVTs), and certain high-risk designated non-financial businesses and professions (DNFBPs), to have policies, controls and procedures to manage and mitigate money laundering and terrorism financing risks,⁶ identify and verify the identity of customers and beneficial owners, report suspicious and cash transactions to FIU and retain related records for at least 5 years.

Pursuant to MLPCA, both FIC and FIU are the supervisory and regulatory bodies for banks and MVTs and

⁶ Development after the country visit: the Palauan authorities indicated that FIU regulations for DNFBPs containing these requirements were in the process of being adopted at the time of finalization of the executive summary.

may impose sanctions for failure to comply with the requirements of the Act. FIU is generally empowered to regulate some categories of DNFBPs but no supervisory bodies exist for these. FIU has issued an AML/CTF regulation for financial institutions but no similar regulation for DNFBPs is available yet.

Based on the above, it was recommended that Palau enact necessary regulation for credit unions, MVTS and DNFBPs which would outline their AML/CTF obligations in sufficient detail and establish effective supervision over these sectors.

Subparagraph 1 (b) of article 14

1. Each State Party shall: ...

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Palau established an AML/CFT Working Group established through an Executive Order 218 by the President on 10 November 2003. The Executive Order was amended in March 2014 through Executive Order 362 to strengthen the coordination mechanism, in particular to provide legal basis for the MLWG to expand its membership and to engage in regular monthly meetings. The MLWG is made up of the Chairman of the Financial Institutions Commission who is the Chairman of the Working Group, the Attorney General, the Executive Commissioner of the Financial Institutions Commission, the Head of the Financial Intelligence Unit, the Director of the Bureau of Public Safety, the Director of the Bureau of Immigration, the Director of the Bureau of Labor and Human Resources, the Anti-Terrorism Coordinator, Ministry of Justice, the Chief of the Division of Customs in the Bureau of Revenue, Tax, and Customs and a representative from the Office of the President.

The Executive order sets out the duties and functions of the MLWG. While there is no specific reference to development of national AML/CFT policies, the MLWG's duties and functions include "To coordinate the Republic's overall fight against money laundering and the financing of terrorism", to recommend amendments to relevant laws, and to enhance communication and coordination of efforts to combat ML and TF. The MLWG's functions encompass both policy-making and operational coordination functions. The duties and functions of the MLWG include to cultivate good working relationships between the various agencies that are engaging in combating ML and TF, to provide for the timely exchange of information between the relevant Government agencies, to develop joint targeting strategies, to jointly profile or identify common suspects and to develop and enhance common law enforcement and regulatory training activities. Whilst the presence of the MLWG has some positive impacts on the overall fight against ML and TF activities, questions lay however, on whether the MLWG has the same influence on the operational level. The work on combating ML and TF will be more active and effective if similar set up as the MLWG are in place as well at the lower level that should involve operational people; those who are actually involving in the day-to-day work of combatting the activities of ML and TF.

In 2016, Palau created the FCIU, a taskforce, which is mandated to meet on a monthly basis and includes a number of select investigators from various agencies in the government including the FIU, Bureau of Public Safety, the OAG, the Customs Office, Special Prosecutor's Office, NEA, Revenue and Taxation, and the Postal Inspector. The FCIU meets to review and assign STRs received from the FIU to one or more members of the investigative core and then formulates an investigative plan and reviews the progress of the assigned investigator(s). Establishment of the FCIU has created a practical mechanism for cooperation and coordination of activities to combat ML.

The Palau FIU is the central governmental authority for the receipt and collection of information regarding suspicious transactions and cash transaction they may relate to possible money laundering. Thus, pursuant to Section 3333 of the Act, the Palau FIU is statutorily enabled to:

- (a) to receive information and reports in accordance with its functions and, in relation to any information or report it has received, to make inquiries with or obtain from any financial institution any additional information the Financial Intelligence Unit deems necessary to carry out its functions, regardless of whether the requested person has made a report. The information requested shall be provided within the time limits and the form specified by the Financial Intelligence Unit;
- (b) to analyze and assess any report or information received in accordance with its functions;
- (c) for transactions or attempted transactions that occurred prior to the entry into force of this Act, to require financial institutions and designated non-financial business and professions to disclose records in the financial institution's or the designated non-financial business and profession's control, that pertain to the transaction or attempted transaction for a particular account for or by a particular person, and for a particular time period, if such disclosure would have been required to be reported under the provisions of this Act if it had been in effect during the particular time period in question;
- (d) to enter the premises of any financial institution or designated non-financial business and profession during ordinary business hours to inspect any records kept pursuant to this Act and that are necessary to the fulfillment of the functions of the Financial Intelligence Unit, and to ask any questions and make enquiries relating to and make notes and take copies of such records;
- (e) in relation to any report or information it has received in accordance with its functions, to obtain or collect any information it deems necessary to carry out its function, whether or not publicly available, including commercially available databases or information and information stored in databases maintained by other government agencies that may hold relevant information such as Bureau of Revenue, Customs and Taxation, Bureau of Public Safety, Office of the Attorney General or other competent supervisory authorities; and (if necessary) "to refer any report or information it has received in accordance with its functions to the appropriate law enforcement agency in the Republic of Palau if, on the basis of its analysis and assessment, the Financial Intelligence Unit has reasonable grounds to suspect that a transaction or attempted transaction involves proceeds of crime, or is related to or intended for financing of terrorism, or is terrorist property." 17 PNCA §3333(g)

The Palau FIU has authority "to act on behalf of the Republic of Palau in seeking information from any foreign government agency, foreign law enforcement agency, foreign supervisory authority and foreign auditing authority for purposes of this Law." 17 PNCA §3333(f)

MOUs Palau FIU signed with Foreign FIUs

MOUs Signed	Year Signed
Philippines	November 17, 2004
Chinese Taipei	March 3, 2005
APIFIU – Association of Pacific Islands Financial Intelligence Units.	21 July 2011 (Kochi, India)
Republic of Korea	July 17, 2013
Japan	April 27, 2017
Thailand	2017

Exchange of information between Palau FIU and Foreign FIUs and LEAs

	2014	2015	2016	2017
Request received from Foreign Agencies	1	0	1	0
- Requests executed	1	0	0	1
Requests made by Palau FIU to other FIUs or agencies	0	0	2	2
- Requests executed	0	0	2	2

(b) Observations on the implementation of the article

Domestic cooperation and coordination are carried out via the Working Group on Money Laundering (MLWG). The Group's functions encompass both policy-making and operational coordination. It is chaired by FIC and its member bodies include the Attorney General's Office, FIU, Bureau of Public Safety, Division of Customs in the Bureau of Revenue, Tax, and Customs, etc. The first National Risk Assessment of AML/CTF risks was finalized by MLWG in November 2017 as confirmed during the country visit. In addition, there is a standing taskforce, Financial Crime Investigation Unit, to coordinate efforts of various law enforcement agencies to combat money laundering.

MLPCA established FIU as an independent agency responsible for receiving, analysing, investigating and disseminating information concerning suspected proceeds of crime and terrorist property (17 PNC section 3331). Section 3334 sets out FIU's powers, duties and obligations in more detail and provides for the power to cooperate and share information with domestic and foreign competent authorities. Internationally, FIU is empowered to cooperate and exchange information with foreign counterparts without an agreement and may enter into such agreements if required by other jurisdictions.

Palau has implemented the provision under review.

Paragraph 2 of article 14

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

(a) Summary of information relevant to reviewing the implementation of the article

The legislation in meeting the requirements of the Article under review are as follows:

17 PNC § 3601 (Cash Courier Disclosure Act)

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.

Under 17 PNC Section 3602, the term "transport cash or negotiable instruments" refers to any in bound or outbound 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.

17 PNC §3607 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.

Method of detection under 17 PNC 3606:

- Search without warrant

Based on suspicion or reasonable cause to believe by officer of Customs that negotiable instruments are being transported without declaration or that they are proceeds of crime, the latter may conduct a search without search warrant on a vessel, aircraft, or other conveyance, envelope, or other container, or person entering or departing from the Republic of Palau.

Search with warrant

- By search warrant by the Office of the Attorney General based on suspicion or reasonable cause to believe.

At the airport, upon arrival on the entry form, one is asked if you are carrying more than USD10,000 cash; if so, then it must be declared.

One of the challenges is that the x-ray machine at the airport is currently down, so customs officials are required to search bags in relation to goods being brought into the country, including cash over USD10,000.

(b) Observations on the implementation of the article

Any person who attempts to, or physically transports cash or negotiable instruments in an aggregate amount of 10,000 USD or more (or its equivalent) across Palauan borders shall file a written declaration to the Division of Customs with a copy to FIU (section 3603). For any failure to file a declaration or filing a declaration containing any material omission or misstatement, an administrative penalty of 5% of the total amount may be assessed, in addition to any criminal or civil penalties (section 3607).

The reviewers believe that the administrative penalty is too low and may not adequately deter persons from not filing or filing false declarations. During the country visit the authorities also agreed that it was a challenge. It was therefore recommended that Palau adopt effective and dissuasive sanctions for failure to declare or false declaration of cross border transportation of cash and negotiable instruments.

Paragraph 3 of article 14

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

(a) Summary of information relevant to reviewing the implementation of the article

Legislative measures in meeting the requirements of the Article under review are as follows:

17 PNC § 3318. Wire transfers.

(a) Financial institutions and designated non-financial business and professions whose activities include wire transfers shall obtain and verify the information and maintain, manage and transmit the information as prescribed by regulation set forth by the Financial Intelligence Unit.

(b) If the financial institution or designated non-financial business and profession referred to in subsection (a) receives a wire transfer that does not contain the complete originator information, it shall take reasonable measures to obtain and verify the missing information from the ordering institution or the beneficiary.

(c) In the case that the missing information cannot be obtained, the transfer shall be refused and a suspicious transaction report shall be filed with the Financial Intelligence Unit.

Section 6 MLPCA 2001

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 11 (b) MLPCA 2001

Special monitoring of certain transactions

Transactions that involve business relations or transactions with persons in jurisdiction 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 apparent or no 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 finding sin writing and retain such record pursuant to section 12.

The three commercial banks - Bank of Guam, Bank of the Pacific, Bank of Hawaii – are required to abide by US standards.

(b) Observations on the implementation of the article

17 PNC sections 3318 and 3812 require all domestic and international wire transfers to have and maintain throughout the payment chain, accurate and meaningful originator and recipient information, including but not limited to, name, address and account number. As identified in the 2018 APG assessment, there are certain deficiencies with regard to the obligations of intermediaries to maintain required information. However, given that the only commercial banks operating in Palau – and acting as intermediary or beneficiary banks – are subject to rigorous AML regulation and supervision in the United States, those deficiencies are mitigated to a large extent.

Paragraph 4 of article 14

4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Palau is a member of the APG and has undergone Mutual Evaluation on the implementation of AML/FTA by the International Monetary Fund and APG in 2008 based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF).

(b) Observations on the implementation of the article

It is noted that Palau's AML framework has undergone more recent assessment by APG in 2018 and was found to have addresses many gaps identified by the 2008 assessment. Nevertheless, several recommendations related to, inter alia, the awareness of AML/CTF obligations and risks by reporting entities, the regulation and supervision of DNFBPs and MVTS as well as transparency and beneficial ownership of legal persons and legal arrangements have still been rated as non-compliant or partially compliant.

Paragraph 5 of article 14

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Palau has a robust mutual assistance regime with its Pacific/Asian partners, including, but not limited to Guam/Saipan (Territories of the United States), the Philippines, Japan, South Korea and Taiwan. The Palau FIU and select Palau LEA have a close working relationship with the U.S. F.B.I., USSS and U.S. Homeland Security that often provides investigative assistance and training. The Palau FIU shares extensive information with its U.S. counterparts and responds to inquiries from its Asian neighbors.

(b) Observations on the implementation of the article

Currently, Palauan FIU has signed six memoranda of understanding with foreign jurisdictions and organizations in Asia and Pacific regions. As further clarified during the country visit, FIU is not yet a member of the Egmont Group which poses challenges to effective exchange information with foreign counterparts, especially outside the region. The process to acquire membership has been delayed due to unforeseen circumstances and the financial costs associated with the process are increasing which was reported as a particular challenge.

It was recommended that Palau endeavor to finalize the membership process of FIU in the Egmont Group as a matter of urgency (art. 14(5)).

V. Asset recovery

Article 51. General provision

Article 51

1. *The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.*

(a) Summary of information relevant to reviewing the implementation of the article

Section 3311 of Title 17 Chapter 33 of the *Palau National Code (PNC) (Penal Code of the Republic of Palau)* prohibits the establishment or maintenance of anonymous accounts or accounts in fictitious names. Section 3312 outlines customer due diligence requirements.

Section 3322(g) of the *Penal Code* provides that no administrative proceeding for breach of banking or professional secrecy or contract may be instituted against a financial institution, or its respective directors, principals, officers, partners, professionals or employees who in good faith submit a report or provide information in accordance with the provisions of this section. Section 3322(a) requires financial institutions and designated non-financial business and professions to submit a report to the Financial Intelligence Unit for any currency transaction in an amount above \$10,000 whether conducted as a single transaction or several transactions that appear to be linked.

Section 3334(u) outlines the duty of the Financial Intelligence Unit to cooperate, share information and enter into agreements or arrangements with foreign government institution or agency, or any international organization, in accordance with section 3334.

Internationally, Palau endorsed the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and its Action Plan. It is also a member of United States Joint Interagency Taskforce West, Association of Government Accountants (International with Regional Chapters, associated with Guam Chapter), Association of Certified Fraud Examiners (self-funded trainings) and works with Embassies e.g. for relevant contacts in other countries, translation services.

Regionally, Palau is a member of the UN Pacific Regional Anti-Corruption (UN-PRAC) Project, together with other Pacific Island countries and a territory (Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu).

Palau is also a member of the Pacific Islands Legal Officers' Network (PILON), Pacific Islands Forum Secretariat, Oceania Customs Organisation, Pacific Immigration Directors Conference, Pacific Patrol Boat Program, Secretariat of the Pacific Community, Pacific Association of Supreme Audit Institutions, Association of Pacific Islands Public Auditors and various other international law enforcement agencies and the private industry (such as the Fisheries Forum).

Penal Code of the Republic of Palau

§ 3301. Definitions.

In this chapter, unless a different meaning plainly is required:

...

(b) “Beneficial owner” means the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those natural persons who exercise ultimate effective control over a legal person or arrangement.

(i) “Customer” means any person for whom a transaction or account is arranged, opened or undertaken; who is a signatory to a transaction or account; to whom an account or right or obligation under a transaction has been assigned or transferred; who is authorized to conduct a transaction or control an account; who attempt to take any of the actions set out under this definition; and any person as may be prescribed by regulation as set forth by the Financial Intelligence Unit.

(j) “Designated Non-financial Business or Profession” means any of the following:

- (1) Casinos, including internet casinos and other businesses engaged in operating online games involving gambling;
- (2) Real estate agents, and any person involved in the transfer of real property in the regular course of business;
- (3) Dealers in precious metals and precious stones, including, but not limited to, gold, silver, platinum bullion, rare coins, diamonds, emeralds, rubies or sapphires;
- (4) Lawyers and other independent legal professionals when they prepare for, engage in, or carry out transactions for a client concerning the buying or selling of real estate; managing of client money, securities or other property; management of a bank, savings, or securities accounts; organization of contributions for the creation, operation, or management of legal persons; creation, operation or management of legal persons or arrangement, and buying and selling of business entities;
- (5) Trust and company service providers not otherwise covered by this law which, as a business, prepare for or carry out transactions on behalf of customers in relation to any of the following services to third parties: acting as formation, registration or management agent of legal persons; acting as, or arranging for another person to act as, a director or secretary of a company or a partner of a partnership, or to hold a similar position in relation to other legal persons; providing a registered office, business address or accommodation, correspondence of administrative address for a company, a partnership of any other legal person or arrangement; acting as, or arranging for another to act as a trustee of an express trust or other similar arrangement; acting as or arranging for another person to act as a nominee, shareholder for another person; and
- (6) Other such companies, institutions, and persons as may be prescribed by regulation as set forth by the Financial Intelligence Unit.

...

(l) "Financial Institution" means any bank or banking association, commercial bank or trust company, any private bank, industrial savings bank, savings or thrift institution, savings and loan association, building and loan association, credit union, agency, agent or branch of a foreign bank, currency dealer or exchange, business engaged primarily in the cashing of checks, person engaged in the issuing, selling or redeeming of traveler's checks, money orders or similar instruments, any broker or dealer in securities, licensed transmitters of funds or other person regularly engaged in transmitting funds to foreign nation for others, any investment banker or investment company, any insurer, any pawnbroker, any telegraph company, any person regularly engaged in the delivery, transmittal, or holding of mail or packages, vehicle, vessel, or aircraft, any personal property broker, any person or business acting as a real property securities dealer, and any natural or legal person that conducts as a business any of the following activities:

- (1) Acceptance of deposits and other repayable funds from the public including private banking;
- (2) Lending, including but not limited to, consumer credit, mortgage credit, factoring, and financing of commercial transactions, including forfeiting;
- (3) Financial leasing other than with respect to arrangements relating to consumer products;
- (4) The transfer of money or value;
- (5) Issuing and managing means of payment, including but not limited to credit and debit cards, traveler's checks, money orders and bankers' drafts, and electronic money;
- (6) Issuing financial guarantees and commitments;
- (7) Trading in money market instruments, including but not limited to checks, bills, certificates of deposit and derivatives; foreign exchange; exchange, interest rate and index instruments; transferable securities; and commodity futures;
- (8) Participation in securities issues and the provision of financial services related to such issues; individual and collective portfolio management;
- (9) Safekeeping and administration of cash or liquid securities on behalf of other persons;
- (10) Investing, administering of cash or liquid securities on behalf of other persons;
- (11) Underwriting and placement of life insurance and other investment related insurances; and
- (12) Money and currency changing;
- (13) Any other activity as prescribed by regulation as set forth by the Financial Intelligence Unit.

§ 3311. *Anonymous accounts.*

Financial institutions and designated non-financial business and professions are not permitted to establish or maintain anonymous accounts or accounts in fictitious names.

§ 3312. *Customer due diligence.*

(a) Financial institutions and designated non-financial business and professions shall apply customer due diligence measures.

(b) In relation to cross border correspondent relationships, in addition to performing due diligence measures under subsection (a), financial institutions and designated non-financial business and professions shall gather information about the institution's business, its reputation, and the nature and quality of the supervision to which it is subject, before establishing a new correspondent relationship, and conduct an assessment of the quality of Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) controls applicable to the foreign respondent institution's and designated non-financial business and professions' business.

(c) The respective Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) responsibilities of each financial institution and designated on-financial business and profession shall be documented.

(d) The Financial Intelligence Unit shall promulgate rules and regulations in furtherance of this section.

§ 3313. Measures to identify politically exposed persons.

Financial institutions and designated non-financial business and professions shall have in place measures to identify politically exposed persons and other customers who may pose a high risk of money laundering or financing of terrorism and to manage the risk associated with such persons as prescribed by regulations set forth by the Financial Intelligence Unit.

§ 3314. Complex patterns in transactions.

(a) Financial institutions and designated non-financial business and professions shall pay special attention to all complex, unusual large transactions or unusual patterns of transactions, which have no apparent or visible economic or lawful purpose, and to business relationships and transactions with persons, including legal persons and other financial businesses, from or in countries which do not sufficiently apply the Financial Action Task Force (FATF) Recommendations.

(b) Financial institutions and designated non-financial business and professions will be advised of concerns about weaknesses in the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) controls of other countries by the Financial Intelligence Unit.

(c) Financial institutions and designated non-financial business and professions shall set forth in writing the specific information regarding transactions described in this section, including the identity of all of the parties involved, the origin and destination of the funds, and the purpose of the transaction. The report shall be maintained by the financial institution or designated non-financial business and profession and a suspicious transaction report or reports shall be filed immediately with the Financial Intelligence Unit.

(d) The measures under this Section shall be in accordance with the requirements prescribed by regulation set forth by the Financial Intelligence Unit.

§ 3315. Third party due diligence.

(a) Financial institutions and designated non-financial business and professions may rely on an intermediary or third party to perform some of the elements of the customer due diligence measures under 17 PNC section 3311 or to introduce business.

(b) The ultimate responsibility for customer identification and verification shall remain with the financial institution and designated non-financial business and professions relying on the third party.

(c) The Financial Intelligence Unit shall promulgate regulations in regards to this section.

§ 3322. Reporting of transactions.

(a) Financial institutions and designated non-financial business and professions shall submit a report to the Financial Intelligence Unit for any currency transaction in an amount above \$10,000 whether conducted as a single transaction or several transactions that appear to be linked. The Financial Intelligence Unit shall issue rules on the procedures for and form in which the reports shall be submitted and shall publish guidance to assist financial institutions to fulfill their obligations under this Chapter. Reports shall be made without delay and at least within the timeframe set forth in the rules issued.

(b) Financial institutions and designated non-financial business and professions shall submit a report to the Financial Intelligence Unit for any request by a person to conduct a transaction to create a legal person, legal entity, or other legal arrangement; to manage a legal person, legal entity, or other legal arrangement; or to utilize a legal person, legal entity, or other legal arrangement to conduct a transaction described in subsection (a), if the person making the request fails to provide the necessary information to allow the financial institution or designated non-financial business and profession to comply with sections 3310, 3311, 3312, 3314, or 3316 of this Chapter, or if the request implicates section 3313.

(c) No financial institution or designated non-financial business and profession, including employees and agents of such financial institutions and designated non-financial business and professions shall disclose to any customer or third party that a report or any other information will be, is being or has been submitted to the Financial Intelligence Unit in accordance with the provisions of this Chapter, or that a money laundering or financing of terrorism investigation is being or has been carried out.

(d) Subsection (c) does not apply in relation to disclosures or communications between and among directors, officers and employees of the financial institutions; or in the case of a lawyer or other independent legal professional when seeking to dissuade a client from engaging in illegal activity.

(e) Except for the purpose of the due administration of this Law, no person shall disclose any information that will identify or is likely to identify the person who prepared or made a report made in accordance with the provisions of this Chapter, or handled the underlying transaction.

(f) No person shall be required to disclose a report made in accordance with the provisions of this Chapter or any information contained in such a report or provided in connection with it, or the identity of the person preparing or making such report or handling the underlying transaction in any judicial proceeding unless the judge is satisfied that the disclosure of the information is necessary in the interests of justice.

(g) No criminal, civil, disciplinary or administrative proceeding for breach of banking or professional secrecy or contract may be instituted against a financial institution, or its respective directors, principals, officers, partners, professionals or employees who in good faith submit a report or provide information in accordance with the provisions of this section.

(h) No criminal action for money laundering or financing of terrorism shall be brought against a financial institution and designated non-financial business and professions, or its directors, officers or employees in connection with an action undertaken in good faith to execute a transaction if a report was made in good faith and in a timely manner.

(i) Lawyers and other independent legal professionals have no obligation to report information required to be reported by this section that they receive or obtain from a client in the course of developing a legal position for a client, or performing the task of defending a client or representing a client in, or concerning a judicial proceeding, including rendering advice on how to avoid such judicial proceedings, regardless of whether such information is received or obtained before, during, or after such judicial proceedings. The reporting required of lawyers and other legal professionals by this Division is hereby deemed to be in accordance with American Bar Association Rule of Professional Conduct No. 1.6(b)(2) and (3) as a permissible disclosure to prevent, mitigate, or rectify a crime, fraud, or substantial injury to the financial interests or property of another that is reasonably certain to occur, or that has occurred, and in furtherance of which the lawyer's legal services have been utilized by the client.

§ 3334. Powers, duties and obligations of Financial Intelligence Unit.

To properly implement its functions under this Law, the Financial Intelligence Unit shall have the following powers and duties:

(a) to receive information and reports in accordance with its functions and, in relation to any information or report it has received, to make inquiries with or obtain from any financial institution any additional information the Financial Intelligence Unit deems necessary to carry out its functions, regardless of whether the requested person has made a report. The information requested shall be provided within the time limits and the form specified by the Financial Intelligence Unit;

(b) to analyze and assess any report or information received in accordance with its functions;

(c) for transactions or attempted transactions that occurred prior to the entry into force of this Act, to require financial institutions and designated non-financial business and professions to disclose records in the financial institution's or the designated non-financial business and profession's control, that pertain to the transaction or attempted transaction for a particular account for or by a particular person, and for a particular time period, if such disclosure would have been required to be reported under the provisions of this Act if it had been in effect during the particular time period in question;

(d) to enter the premises of any financial institution or designated non-financial business and profession during ordinary business hours to inspect any records kept pursuant to this Act and that are necessary to the fulfillment of the functions of the Financial Intelligence Unit, and to ask any questions and make enquiries relating to and make notes and take copies of such records;

(e) in relation to any report or information it has received in accordance with its functions, to obtain or collect any information it deems necessary to carry out its function, whether or not publicly available, including commercially available databases or information and information stored in databases maintained by other

government agencies that may hold relevant information such as Bureau of Revenue, Customs and Taxation, Bureau of Public Safety, Office of the Attorney General or other competent supervisory authorities;

(f) to act on behalf of the Republic of Palau in seeking information from any foreign government agency, foreign law enforcement agency, foreign supervisory authority and foreign auditing authority for purposes of this Law;

(g) to refer any report or information it has received in accordance with its functions to the appropriate law enforcement agency in the Republic of Palau if, on the basis of its analysis and assessment, the Financial Intelligence Unit has reasonable grounds to suspect that a transaction or attempted transaction involves proceeds of crime, or is related to or intended for financing of terrorism, or is terrorist property;

(h) to apprise the competent supervisory authority whenever it appears that a financial institution or designated non-financial business and profession, or any of its respective directors, officers or employees, is not complying or has not complied with the obligations under this Law or any regulation issued in execution of this Law;

(i) to destroy a suspicious transaction report received or collected on the expiry of six years after the date of receipt of the report if there has been no further activity or information relating to the report or the person named in the report, or six years from the date of the last activity relating to the person or report, whichever date is later;

(j) to instruct any financial institution or designated non-financial business and profession to take such steps as may be appropriate in relation to any information or report received by the Financial Intelligence Unit to enforce compliance with this Law or to facilitate any investigation anticipated by the Financial Intelligence Unit or a law enforcement agency;

(k) based on reasonable grounds to suspect that a transaction or attempted transaction involves proceeds of crime, or is related to or intended for financing of terrorism, or is terrorist property, to direct in writing that the financial institution or designated non-financial business and profession involved in the transaction either proceed or refrain from proceeding with the transaction or attempted transaction, for a period to be determined by the Financial Intelligence Unit.

(1) Any direction must not exceed five working days if the direction is in writing.

(2) Any direction given orally must not exceed 24 hours and must be confirmed in writing within 24 hours of the oral direction.

(3) Before the expiration of five days of giving the direction, the Financial Intelligence Unit may apply to the Supreme Court for an order to extend the period of the direction.

(l) to issue guidelines to financial institutions and designated non-financial business and professions on the manner of transaction reporting under Part III of this Chapter, including specification of reporting forms, content of transaction reports and the procedures that should be followed when reporting transactions;

(m) to provide feedback to the financial institution, designated non-financial business or profession and any relevant government department, office, agency or institution regarding outcomes relating to the reports or information provided by it under the provisions of this Law;

(n) to provide training programs for financial institutions and designated non-financial business and professions in relation to reporting obligations, and the identification of suspicious transactions;

(o) to conduct research into and compile and provide information and statistics on trends and developments in the area of money laundering, the financing of terrorism, and ways to detect, prevent and deter such activities;

(p) to educate the public and create awareness on matters relating to money laundering and the financing of terrorism;

(q) to cooperate and share information with other domestic competent authorities;

(r) to assist competent authorities to investigate or prosecute any offense;

(s) to provide information to and assist competent authorities to apply seizing and confiscation measures pursuant to 17 PNC Chapter 7; or to freeze property under 17 PNC Chapter 33, Part V;

(t) to advise financial institutions and designated non-financial business and professions of concerns about weaknesses in the anti-money laundering and countering financing of terrorism (AML/CFT) systems of other countries;

(u) to cooperate, share information and enter into agreements or arrangements with foreign government institution or agency, or any international organization, in accordance with 17 PNC section 3334; and

(v) to report in writing to the Governing Board of the Financial Institutions Commission of the Republic of Palau prior to the end of each fiscal year on the activities of the Financial Intelligence Unit during the

previous year and the expected activities of the Financial Intelligence Unit during the subsequent year, without disclosing confidential information or information that may jeopardize an ongoing investigation or prosecution.

(w) to promulgate any rules and regulations as may be necessary to give effect to the intent of Chapter 33 of this title of the Palau National Code; in addition, any regulations previously promulgated by the Financial Intelligence Unit under the authority of the Money Laundering and Proceeds of Crime Act of 2001 shall remain in full force and effect as if promulgated under the authority of this Act.

§ 3334. *Disclosure.*

(a) The Financial Intelligence Unit may disclose any report or information to a foreign government agency or institution, or an international organization, that performs similar functions and is subject to similar secrecy obligations as the Financial Intelligence Unit –

(1) on such terms and conditions as are set out in an agreement or arrangement between the Financial Intelligence Unit and the foreign government institution or agency, or international organization, regarding the exchange of such information; or

(2) where such an agreement or arrangement has not been entered into, on such terms and conditions as may be agreed upon by the Financial Intelligence Unit and the foreign institution, agency or organization at the time of disclosure.

(b) The Financial Intelligence Unit, with the approval of the Governing Board of the Financial Institutions Commission, may enter into a formal agreement or arrangement, in writing, with a foreign government institution or agency, or international organization, with powers and duties similar to the Financial Intelligence Unit regarding the exchange of information between the Financial Intelligence Unit and that institution, agency or organization.

(c) Agreements or arrangements entered into under subsection (a) or the terms and conditions under subsection (b) shall include a stipulation that

(1) any information provided under this Section shall be used by the foreign institution, agency or organization only for the purpose of combating money laundering, financing of terrorism or any other felony. Any other use shall require consent of the Palauan authority providing the information; and

(2) any information provided under this Section may not be further disclosed or disseminated by the foreign institution, agency or organization to other authorities in the receiving State or elsewhere without the express consent of the Financial Intelligence Unit.

(d) A decision by the director of the Financial Intelligence Unit to analyze a matter or disseminate information under 17 PNC section 3333 is not subject to review except by the Governing Board of the Financial Institutions Commission.

(e) Any person who has duties for or within the Financial Intelligence Unit is required to keep confidential any information obtained or matter disclosed to him or her within the scope of these duties, even after the cessation of those duties, except as otherwise provided by this Law or any regulation issued in execution thereof, or as ordered by the court. Such persons may only use such information for purposes provided for and in accordance with this Law.

(f) Any person or past employee of the Financial Intelligence Unit or other person who has duties for or within the Financial Intelligence Unit who willfully discloses information in contravention of subsection (e) shall be guilty of a Class C felony or a maximum fine of \$10,000, or both.

Palau has a reasonable legal framework for international cooperation for both Mutual Legal Assistance (MLA) and extradition, but there are no policies and procedures on how MLA and extradition will be sought and responded to. The lack of policies and procedures has not affected the few requests received and made, with the law providing some guidelines on how MLA and extradition requests should be managed.

- Palau received one MLA request from the United States (2010-11), one request from Chinese Taipei (2014) and has made no MLA requests. Palau has made one extradition request to the US (Guam), which in the context of the risks and type of criminality in Palau seems reasonable. The case demonstrates that Palau is responding to incoming requests expeditiously.

- Given the limited use of formal and informal international cooperation due to Palau's context it is difficult to judge whether cooperation is commensurate with Palau's risk profile. It is notable that informal cooperation has been undertaken by the FIU, FIC, CID, OAG, OSP and the NEA. One request was made to the Philippines relating to drug trafficking, judged to be Palau's highest risk crime and was effectively responded to.

- While Palau engages closely and effectively with the United States with respect to the FIU, Supervisory authorities and law enforcement, it does not appear to have similar arrangements with other neighbouring jurisdictions, though it does have a number of FIU-FIU MOUs.
- Palau has never made or received a request for international cooperation to identify or exchange basic or beneficial ownership information. Palau is in principle able to cooperate with foreign competent authorities through a formal MLA request or under existing MOUs or other informal cooperation arrangements. However, there is no requirement in Palau for companies to maintain BO information beyond the legal owner of shares, so authorities may not be able to secure adequate, accurate and current basic and BO information on all types of legal persons in Palau. Palau however is not seen as a jurisdiction for company formation.
- Palau is not yet a member of the Egmont Group (though it has applied for membership) and has not joined informal networks such as ARIN-AP. Recommended Action • Palau should actively utilise the powers available under the AMLA to facilitate AML/CFT cooperation with foreign countries.
- Palau should develop policies and procedures to ensure MLA and extradition requests are sought and received in a timely and efficient manner.
- Palauan competent authorities should continue to establish and strengthen their individual cooperation mechanisms with neighbouring jurisdictions' equivalent competent authorities in order to exchange financial intelligence and supervisory, law enforcement and other information with foreign counterparts.
 - As recommended under IO.5, Palau needs to strengthen the collection and maintenance of beneficial ownership information by companies. Once established, Palau should introduce mechanisms to ensure that if a foreign request for beneficial ownership information is received, it is able to provide this information in a timely manner.
- Palau should fully engage in the application process for Egmont Group membership, and should consider joining informal information sharing and cooperation networks such as ARIN-AP.

The Office of the Attorney General (OAG) is the central authority for the transmission and execution of MLA requests. The Attorney General may make requests on behalf of Palau to the appropriate authority of a foreign state for MLA in any investigation that has commenced or a proceeding instituted relating to any serious offense. Extradition proceedings are within the purview of the Minister of Justice (or designee).

In regards to terrorism, the Palau National Code (s.2214 a) designates the Attorney General to grant requests from a foreign state, for legal assistance in any investigation or proceeding relating to terrorism, or a terrorist organization. Palau can provide MLA to any jurisdiction so long as the request is not from any of the UN sanctioned listed countries. The requests are dealt with as they are received.

The OAG and the Office of the Special Prosecutor (OSP) who are responsible for criminal prosecutions are able to use a range of avenues to progress both MLA and extradition. These means include through the Compact of Free Association between Palau and the U.S., the mutual legal provisions under the United Nations Convention Against Corruption (UNCAC), letters rotatory, or through other mutually-available statutory provisions of Palau and other nations' laws. The extent of cooperation by LEAs to international investigations is not clear, and there are no cited examples where cooperation has resulted in operational outcomes.

In the period 2009 to 2017, Palau received one MLA request from the United States (2010-11), one request from Chinese Taipei (2014) and has made no MLA requests. The number of requests is slightly lower than expected based on Palau's risks, though the level of criminality in Palau seldom involves transnational crime. Palau made one extradition request to the US (Guam) in 2015.

Due to context and size, extradition requests made to Palau are not common; nor are requests made by Palau to other jurisdictions.

Besides legislative provisions governing MLA and extradition, there are no guidelines, directions or prioritisation policies for handling these matters. In light of the very small number of requests received and made, Palauan authorities have not developed any protocols or manuals to prioritise and deal with MLA as the need has not arisen. The OAG informed the team that appropriate mechanisms, policies and procedures will be developed if and when they are required. 388. With respect to the MLA request from Chinese Taipei, the MLA request was preceded with four questions regarding whether certain persons of interest had any accounts or business dealings in Palau. Palau answered immediately that it did not and no further action was taken on the MLA request. The lack of guidelines did not hinder the process or the response time.

The U.S. MLA request was fully dealt with by the Palau Independent Counsel prosecuting the Pacific Savings Bank (PSB) case. In this case, Palau authorities worked closely with the U.S. IRS and U.S. Attorney's Office in Guam to secure the extradition of an American who absconded to Australia. At the

conclusion of the criminal case against the three Palauan co-defendants, Palau formally responded to the U.S. MLA request providing all evidence put forward in the domestic Palauan prosecution to assist a further prosecution in America. As the American co-defendant was never secured, the MLA request never progressed with Palau completing all aspects from their perspective. Once again the lack of guidelines or process did not affect the response time or effectiveness of the response.

Palau requested that the US arrest and extradite a dual citizen of the US and Palau who was charged over five separate counts of assault and battery. The U.S. complied with Palau's request and arrested the individual however prior to commencement of the extradition process, the individual decided to voluntarily return to Palau to face charges. This resulted in the extradition request being withdrawn by Palau but nevertheless demonstrated the ability and will to seek extradition. Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements.

Palau has made one extradition request and no MLA requests. This may be reasonable in the circumstances given the risk profile of Palau doesn't tend towards transnational crime. No requests made were consistent with identified ML risks in Palau though based on the size and context of Palau this is not unexpected. During the onsite visit, frustrations were expressed by Palau with the lack of responses to some informal requests made to other jurisdictions. It appears one of the reasons that Palau is seeking membership of the Egmont Group is to utilise the information sharing protocols that is available to members.

In the PSB ML case, which closed the bank in 2006, foreign assistance was sought regarding extradition from Australia. The investigation was reopened in 2009 and the US president of the bank was tracked to Australia. Multiple informal discussions were held with Australia for assistance in extraditing the suspect back to Palau but it did not proceed despite Palau highlighting the serious offences including ML. As Australia did not have an extradition treaty with Palau, formal extradition was not available. Palau worked closely with US Internal Revenue Service and the US Attorney's office in an attempt to revoke the passport of the accused but this did not proceed.

Palau prosecuted a US citizen in relation to an attempted bank fraud in Palau (ROP vs. James O. Dugan et.al, 11/12/2009). The US citizen was in the Philippines prior to arriving in Palau. The Philippines did provide assistance to Palau in this matter although assistance sought from one other jurisdiction was not forthcoming. The case involved a PEP and after the US citizen was jailed but before co-defendants could be brought to justice, the cases were dismissed.

Palau has never had a terrorism or TF case and has never had to seek assistance, which is consistent with the low risk for both terrorism and TF. Seeking and providing other forms of international cooperation for AML/CFT purposes.

In relation to informal cooperation, Palauan competent authorities are responsive to requests for international cooperation received from foreign counterparts and would generally provide timely assistance of satisfactory quality.

Palau's FIU has negotiated and signed six (6) information sharing MOUs with Japan, Philippines, Republic of Korea, Chinese Taipei, Thailand, and one Pacific wide regional MOU.

The Palau FIU has received two requests for information from foreign FIUs in the period 2014 to 2017 (one from Chinese Taipei received in June 2014 and the second from Thailand in 2016). Both requests were responded to in a timely manner.

During the same period of time, Palau has made four requests to the Philippines for information in support of ongoing investigations by the NEA into possible Drug Trafficking and ML. Information sought related to the transfer of funds to certain individuals in that jurisdiction, related bank accounts and telephone numbers. All requests were responded to in reasonable time. No foreign requests or requests made by the FIU were declined. These actions are commensurate with the risks identified in Palau.

Following are the details on the requests received and sent by Palau:

Case Example:

MLA request from Chinese Taipei resulting in informal assistance In June 2014, Chinese Taipei made a formal MLA request to Palau to assist in locating a large sum of cash which was supposedly flown into Palau in bulk. The cash was believed to have been embezzled by a prominent individual and family members. The funds were not located in Palau nor was there any evidence that the funds were ever flown into Palau. This case was informally responded to without delay.

Case Example: Response to informal request for information from Thailand

The Palau FIU was contacted by Thailand FIU in December 2016 regarding an individual that Thailand believed was residing in Palau who was the subject of a money laundering investigation. The suspect listed

a Palau telephone number as his point of contact. Upon receipt of the inquiry, the Palau FIU accessed the immigration database to determine whether the targeted person had ever entered Palau. He had not and the Palau FIU reported the same directly to the Thailand authorities.

The U.S. and Palau have a close relationship based on The Compact of Free Association (COFA) which was signed between the two jurisdictions in 1994. Based on this relationship, Palau has reached out to both the U.S. Secret Service and Federal Bureau of Investigation (FBI) for assistance in the investigation of smuggled bank card skimming devices and U.S. counterfeit money in 2016.16.

Case Example: Informal cooperation with the FBI (USA) In April 2016, an individual, travelling on a Romanian passport, was the intended recipient of a Federal Express package to be delivered to a local hotel address. Upon inspection of the package, Palau's Custom's Officers discovered that the package was a purported used DVD player which contained the mechanism for bank card skimming devices for three of the financial institutions in Palau. The Palau FIU reached out to the FBI in Saipan for assistance as they were aware of a large card skimming operation that had occurred in Saipan previously. The description, photographs and identity of individuals was shared with U.S. authorities however the suspects in Palau escaped arrest and prosecution.

Case Example: Close collaboration with US authorities In June 2016, a refugee from Syria, Mr X, currently living in the Philippines (travelling on a Philippines Refugee Passport) came to Palau with USD60,000 of U.S. counterfeit USD100 dollar bills with another person from Jordan; Mr Y. Mr X was caught with the counterfeit currency. Cooperation was obtained from the U.S. Secret Service which sent an agent to Palau at the request of the Palau FIU and assisted Palau's CID to investigate the matter. It was suspected that the two individuals were engaged in possible human trafficking and smuggling counterfeit currency. Mr Y remained on-island until the case was cleared. During the investigation, the FIU discovered a number of text and email messages on the cell phone belonging to Mr Y which detailed a number of detailed arms transactions (no details on any investigation related to this was provided). The cell phone was turned over to the U.S. FBI for analysis. Mr X was prosecuted and pled guilty to one count of counterfeit currency possession, sentenced to one year probation and permitted to leave Palau. Mr Y was not prosecuted.

Palau is a member of the Pacific Transnational Crime Network (PTCN) since 2005 which has been working collaboratively with the Pacific law enforcement community since its inception in 2002. The PTCN provides a Police-led proactive criminal intelligence and investigative capability to combat transnational crime in the Pacific through a multi-agency and regional approach. While the PTCN is a law enforcement network, it closely partners with FIUs.

Since 1994, a range of instances of cooperation between the US and Palau has occurred including the Ginn cable company money laundering case in 2004, which resulted in the US Internal Revenue Service providing a US\$54,307.84 check to Palau in 2008 as an expression of gratitude for assistance provided by both the OAG and BPS.

The Palau FIU is a member of the Association of Pacific Islands FIUs (APIFIU) which was formed in July 2011. The MOU for APIFIU allows for the exchange of information between member FIUs who include the FIUs of Cook Islands, Fiji, Kiribati, Nauru, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga and Vanuatu. Palau has yet to request information formally or informally from other members of the APIFIU nor has it received any request from other members for assistance or information. The Palau FIU is not a member of the Egmont Group though an application has been submitted. As a non-EGMONT member, Palau is confronting challenges in sharing information with larger jurisdictions.

The FIC actively engages in international exchange and cooperation: The FIC has exchanged information with Chinese Taipei regulators regarding verification of information on possible accounts opened in Palau banks in 2010. These related to significant graft or corruption accusations.

The FIC also exchanged information with Chinese Taipei bank regulators regarding the Palau branch of First Commercial Bank in relation to the voluntary closure of the branch in 2012. The FIC has also worked closely with the FDIC in San Francisco in advising them and putting out notices through FDIC channels about the closure of Pacific Savings Bank in 2006, which was the most significant ML investigation in Palau (convictions achieved in 2011).

The FIC regularly engages with the FDIC regarding the three US Banks operating in Palau which includes reviews of home office financials, changes in ownership structures and executive officer changes particularly in Palau, where the FIC can block branch manager appointments in the Palau based branches. The FIC monitors and receives key issues information from the FDIC which is available from the FDIC website.

The FIC is a member of the Association for Supervisors of Pacific Countries since 2002. One significant benefit is the training offered to members which has covered new and emerging ML threats including block-chain technology and transactions, corporate governance and fit and proper assessment training, among other banking related topics. Over the past three years North Pacific Countries (RMI, FSM, Palau, and Timor-Leste) meet regularly in Guam with a bank examiner exchange program for FDIC bank branches operating in their jurisdiction as one of the initiatives under way.

Palau Customs is an active member of the Oceania Customs Organisation since 1999, which facilitates information exchange and improved communication channels between 23 member jurisdictions.

LEAs in Palau have relied on the FIU to reach out for financial intelligence as in the Philippines case. Palau engages closely and effectively with the U.S. with respect to the FIU, supervisory authorities and law enforcement. Palau has few instances of transnational crime and has attempted to engage with foreign jurisdictions when required though as previously indicated this has seldom occurred over the last 10 years. Both the OSP and LEAs have requested and responded to requests for informal information from US law enforcement agencies.

Date Assistance sought Outcome

Saipan April, 2016 The US FBI requested Palauan Authorities for information on a card skimming case that Palau LEA were investigating to assist in a similar case occurring in Saipan.

Palauan LEA sent all relevant information that they had collected to FBI.

Palau November, 2016 Palau requested assistance from USSS in identifying two Chinese individuals who were caught on camera installing a card skimming device onto a bank ATM machine. USSS was unable to identify the individuals in the video but referred Palau LEA to US Department of Homeland Security which notified Palau that one of the individual was denied entry into Saipan and provided Palau with a copy of his passport.

Palau June, 2014 Palau requested assistance from the FBI to conduct a polygraph test on three individuals that were suspected of murdering an elderly lady. FBI conducted the polygraph test and the individuals were convicted of murdering the elderly lady. US Naval Criminal Investigation Division (NCIS).

March, 2010 US NCIS requested Palau to track down and detain a person of interest in an ongoing murder investigation. NCIS requested for authority to enter Palau and to interrogate the individual. Palau LEA tracked down the individual in the southern state of Angaur and detained the individual. NCIS interrogated the individual in Palau. International exchange of basic and beneficial ownership information of legal persons and arrangements.

Palau has never made or received a request for international cooperation to identify or exchange basic or beneficial ownership information. Palau is in principle able to cooperate with foreign competent authorities through a formal MLA request or under existing MOUs or other informal cooperation arrangements. However, there is no requirement in Palau for companies to maintain BO information beyond the legal owner of shares, authorities may not be able to secure adequate, accurate and current basic and BO information on all types of legal persons in Palau.

The limited number of requests for MLA and no requests made by Palau are in line with the context and size of Palau. Palau has a strong legal framework though lacks formal MLA procedures and guidelines. Results and the structured nature of Palauan legislation suggest that this limited deficiency has not had any impact on effectiveness. Palau has only made one request for extradition which was progressing positively and nothing suggests this would not have been formally concluded if the suspect had not voluntarily agreed to return to Palau. While Palau has had challenges on occasion facilitating positive engagement with foreign jurisdictions, they have responded effectively to two informal requests received from Chinese Taipei and Thailand, a request from the Philippines and multiple requests from the US. There are some deficiencies in the framework such as Palau being unable to share adequate, accurate and current basic and BO information on all types of legal persons in Palau and no procedures or guidelines (while not having an impact to date, they will be necessary to support any potential future complex cases).

(b) Observations on the implementation of the article

The legal framework on asset recovery in Palau consists of the Mutual Assistance in Criminal Matters Act (18 PNC chapter 13), provisions of MPLCA, and provisions of relevant bilateral and multilateral treaties and arrangements. The Office of the Attorney General is the central authority for the execution of foreign mutual legal assistance (MLA) requests.

The authorities also confirmed during the country visit that Palau does not require a treaty to provide MLA to other States. In the absence of a treaty however, provision of assistance would be conditional on reciprocity and dual criminality.

In terms of practice, Palau has received a limited number of both formal and informal MLA requests, which is commensurate with its size and context, and positively responded to all of them. There was only one informal request which concerned tracing of proceeds of corruption.

(c) Technical assistance needs

Palau would benefit from funding for more inter-agency and international cooperation.

Article 52. Prevention and detection of transfers of proceeds of crime

Paragraph 1 of article 52

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

(a) Summary of information relevant to reviewing the implementation of the article

Section 3312 of the *Penal Code* provides that financial institutions and designated non-financial business and professions shall apply customer due diligence measures. Section 3313 provides that financial institutions and designated non-financial business and professions shall have in place measures to identify politically exposed persons and other customers who may pose a high risk of money laundering or financing of terrorism and to manage the risk associated with such persons as prescribed by regulations set forth by the Financial Intelligence Unit.

The term “customer due diligence” is undefined.

The definition of “politically exposed person” extends to both domestic and foreign PEPs.

Section 3315 provides that financial institutions and designated non-financial business and professions may rely on an intermediary or third party to perform some of the elements of the customer due diligence measures under section 3312 or to introduce business.

[Penal Code of the Republic of Palau](#)

§ 3301. Definitions.

In this chapter, unless a different meaning plainly is required:

...

(b) “Beneficial owner” means the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those natural persons who exercise ultimate effective control over a legal person or arrangement.

...

(i) “Customer” means any person for whom a transaction or account is arranged, opened or undertaken; who is a signatory to a transaction or account; to whom an account or right or obligation under a transaction has been assigned or transferred; who is authorized to conduct a transaction or control an account; who attempt to take any of the actions set out under this definition; and any person as may be prescribed by regulation as set forth by the Financial Intelligence Unit.

(j) “Designated Non-financial Business or Profession” means any of the following:

(A) Casinos, including internet casinos and other businesses engaged in operating online games involving gambling;

(B) Real estate agents, and any person involved in the transfer of real property in the regular course of business;

(C) Dealers in precious metals and precious stones, including, but not limited to, gold, silver, platinum bullion, rare coins, diamonds, emeralds, rubies or sapphires;

(D) Lawyers and other independent legal professionals when they prepare for, engage in, or carry out transactions for a client concerning the buying or selling of real estate; managing of client money, securities or other property; management of a bank, savings, or securities accounts; organization of contributions for the creation, operation, or management of legal persons; creation, operation or management of legal persons or arrangement, and buying and selling of business entities;

(E) Trust and company service providers not otherwise covered by this law which, as a business, prepare for or carry out transactions on behalf of customers in relation to any of the following services to third parties: acting as formation, registration or management agent of legal persons; acting as, or arranging for another person to act as, a director or secretary of a company or a partner of a partnership, or to hold a similar position in relation to other legal persons; providing a registered office, business address or accommodation, correspondence of administrative address for a company, a partnership of any other legal person or arrangement; acting as, or arranging for another to act as a trustee of an express trust or other similar arrangement; acting as or arranging for another person to act as a nominee, shareholder for another person; and

(F) Other such companies, institutions, and persons as may be prescribed by regulation as set forth by the Financial Intelligence Unit.

...

(l) “Financial Institution” means any bank or banking association, commercial bank or trust company, any private bank, industrial savings bank, savings or thrift institution, savings and loan association, building and loan association, credit union, agency, agent or branch of a foreign bank, currency dealer or exchange, business engaged primarily in the cashing of checks, person engaged in the issuing, selling or redeeming of traveler’s checks, money orders or similar instruments, any broker or dealer in securities, licensed transmitters of funds or other person regularly engaged in transmitting funds to foreign nation for others, any investment banker or investment company, any insurer, any pawnbroker, any telegraph company, any person regularly engaged in the delivery, transmittal, or holding of mail or packages, vehicle, vessel, or aircraft, any personal property broker, any person or business acting as a real property securities dealer, and any natural or legal person that conducts as a business any of the following activities:

(1) Acceptance of deposits and other repayable funds from the public including private banking;

(2) Lending, including but not limited to, consumer credit, mortgage credit, factoring, and financing of commercial transactions, including forfeiting;

(3) Financial leasing other than with respect to arrangements relating to consumer products;

(4) The transfer of money or value;

(5) Issuing and managing means of payment, including but not limited to credit and debit cards, traveler’s checks, money orders and bankers’ drafts, and electronic money;

(6) Issuing financial guarantees and commitments;

- (7) Trading in money market instruments, including but not limited to checks, bills, certificates of deposit and derivatives; foreign exchange; exchange, interest rate and index instruments; transferable securities; and commodity futures;
- (8) Participation in securities issues and the provision of financial services related to such issues; individual and collective portfolio management;
- (9) Safekeeping and administration of cash or liquid securities on behalf of other persons;
- (10) Investing, administering of cash or liquid securities on behalf of other persons;
- (11) Underwriting and placement of life insurance and other investment related insurances; and
- (12) Money and currency changing;
- (13) Any other activity as prescribed by regulation as set forth by the Financial Intelligence Unit.

“Politically exposed person” means any person who is or has been entrusted with prominent public functions in Palau or in a foreign country, for example Head of State or of government, a senior politician, a senior government, judicial or military official, and any person who is or has been a senior executive of a national or state owned company or a senior political party official. This definition is deemed to include categories of family members and business associates as set forth in regulations promulgated by the Financial Intelligence Unit.

§ 3311. Anonymous accounts.

Financial institutions and designated non-financial business and professions are not permitted to establish or maintain anonymous accounts or accounts in fictitious names.

§ 3312. Customer due diligence.

- (a) Financial institutions and designated non-financial business and professions shall apply customer due diligence measures.
- (b) In relation to cross border correspondent relationships, in addition to performing due diligence measures under subsection (a), financial institutions and designated non-financial business and professions shall gather information about the institution’s business, its reputation, and the nature and quality of the supervision to which it is subject, before establishing a new correspondent relationship, and conduct an assessment of the quality of Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) controls applicable to the foreign correspondent institution’s and designated non-financial business and professions’ business.
- (c) The respective Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) responsibilities of each financial institution and designated on-financial business and profession shall be documented.
- (d) The Financial Intelligence Unit shall promulgate rules and regulations in furtherance of this section.

§ 3313. Measures to identify politically exposed persons.

Financial institutions and designated non-financial business and professions shall have in place measures to identify politically exposed persons and other customers who may pose a high risk of money laundering or financing of terrorism and to manage the risk associated with such persons as prescribed by regulations set forth by the Financial Intelligence Unit.

§ 3314. Complex patterns in transactions.

- (a) Financial institutions and designated non-financial business and professions shall pay special attention to all complex, unusual large transactions or unusual patters of transactions, which have no apparent or visible economic or lawful purpose, and to business relationships and transactions with persons, including legal persons and other financial businesses, from or in countries which do not sufficiently apply the Financial Action Task Force (FATF) Recommendations.
- (b) Financial institutions and designated non-financial business and professions will be advised of concerns about weaknesses in the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) controls of other countries by the Financial Intelligence Unit.

(c) Financial institutions and designated non-financial business and professions shall set forth in writing the specific information regarding transactions described in this section, including the identity of all of the parties involved, the origin and destination of the funds, and the purpose of the transaction. The report shall be maintained by the financial institution or designated non-financial business and profession and a suspicious transaction report or reports shall be filed immediately with the Financial Intelligence Unit.

(d) The measures under this Section shall be in accordance with the requirements prescribed by regulation set forth by the Financial Intelligence Unit.

§ 3315 Third party due diligence.

(a) Financial institutions and designated non-financial business and professions may rely on an intermediary or third party to perform some of the elements of the customer due diligence measures under 17 PNC section 3311 or to introduce business.

(b) the ultimate responsibility for customer identification and verification shall remain with the financial institution and designated non-financial business and professions relying on the third party.

(c) The Financial Intelligence Unit shall promulgate regulations in regards to this section.

§ 3325. Internal monitoring.

Financial institutions shall develop and implement internal policies, procedures and programs for the prevention of money laundering and financing of terrorism and the proper implementation of the provisions of this Law. Such policies, procedures and programs shall include, amongst others:

(a) customer identification and verification of identity measures, including identification and verification of beneficial owners, ongoing due diligence and anti-money laundering and countering financing of terrorism risk management procedures, to successfully comply with the requirements under this Law and any regulation issued in execution of this Law;

(b) procedures to ensure compliance with the property freezing obligations under 17 PNC Chapter 33, Part V.

(c) appropriate compliance management arrangements and adequate screening procedures to ensure high standards when hiring employees;

(d) ongoing training for officials and employees including training to assist them in recognizing transactions and actions that may be linked to money laundering or financing of terrorism; and

(e) internal audit arrangements to check conformity, compliance with and effectiveness of the measures taken in execution of this Law.

FIU Regulations for Banks and other Financial Institutions were enacted in 2017, the regulations for Designated Non-Financial Businesses and Professions (DNFBPs) are not in force. These regulations include further information on internal policies, systems and controls. 1.11 (a) –The FIU Regulation for FIs requires FIs to develop to develop procedures, policies, systems and controls to implement effective AML/CFT programs. Senior management sign-off is not expressly required; (1.11 (b) –FIs are not required to monitor controls and enhance them if necessary.11 (c) - Steps must be undertaken for FIs to undertake enhanced ECDD for higher risk customers.

The Financial Institutions Commission along with the Financial Intelligence Unit’s analyst take part in ongoing onsite bank examinations. During these onsite visits (exams which take an average of one week onsite at the financial institution), the FIC Examiner along with the FIU Analyst perform testing on financial institutions processes, procedures, policies and practices, in order to verify that these mechanisms in place enable the institution to fully comply with the requirements of the AML Chapter of the Penal Code. Such examinations are mandatory when we perform the onsite examinations, and findings are included in the finalized Report of Examination. Should there be deficiencies, such are noted and the FIC along with the FIU make recommendations, and on certain instances, direct the financial institution to take certain measures

within specific timeframes to correct such. Penalties are available should financial institutions fail to comply with the Financial Institutions Act and the aforementioned Chapter of the Penal Code.

(b) Observations on the implementation of the article

MLPCA requires financial institutions to conduct enhanced due diligence measures (EDD) to high risk customers, including when the customer or the beneficial owner of the customer is a domestic or foreign politically exposed person (PEP), their family member or close associate. The 2018 APG assessment identified deficiencies in relation to the procedure to enter into customer relationship with PEPs and the requirements for continuous monitoring of such relationship and transactions involving PEPs. The reviewers refer to the corresponding recommendation under article 14(4) above in this regard.

Furthermore, under the FIU Regulations for FIs, only banks, foreign bank branches and credit institutions must take reasonable steps to identify the beneficial owners of a customer, if the customer is a legal person or arrangement. However, the authorities confirmed the observation made by APG in 2018 that challenges remain in regard to the implementation of these requirements by financial institutions other than the three US commercial banks operating in Palau. There is also no requirement for companies in Palau to maintain beneficial ownership information beyond the legal owner of shares. **Therefore, it was recommended that Palau adopt necessary legislative and administrative measures to (a) require all financial institutions to identify beneficial owners of funds deposited high-value accounts and to provide a definition of such accounts; and (b) require financial institutions to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of legal persons that are close associates of politically exposed persons.**

Subparagraph 2 (a) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(a) Summary of information relevant to reviewing the implementation of the article

These enhanced measures are captured in the Customer Due Diligence Regulation issued by the FIU. Palau issued the new regulations for Financial Institutions, which contain detailed preventative measure requirements in November 2017.

Palau has not issued any advisories to financial institutions on when and how to apply enhanced customer due diligence, recordkeeping and ongoing monitoring of accounts and transactions.

The Financial Institutions Commission has issued a number of prudential and administrative regulations. <http://ropfic.org/laws-regulations.html>.

(b) Observations on the implementation of the article

It was recommended that Palau issue specific advisories to financial institutions on when and how to apply enhanced due diligence, appropriate account-opening, maintenance, record-keeping and ongoing monitoring measures.

Subparagraph 2 (b) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

...

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

(a) Summary of information relevant to reviewing the implementation of the article

26 PNCA Chapter 10 (The Financial Institutions Act), § 1015 states: ... “The Commission is authorized to the extent set forth in this Chapter and under Palau law to cooperate and exchange information with agencies of foreign governments and international agencies. The grant of a license under this chapter 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.”

Example of current system: when the US State Department or other related agencies issue warning or advisories of required freezing of accounts and related transactions on the Office of Foreign Assets Control List (OFAC List), or on the UN Specially Designated Nationals List (“UN SDN List”), the FIC notifies all banks of such and requires immediate application of a freeze on transactions and report back to the FIC if such accounts exist. The usual practice is that the ROP Ministry of State receives such advisories from the US State Department, which are then forwarded to the FIC, and handled accordingly.

Transaction noted above are required and expected to contain names of legal and/or natural persons (See FIU CDD Regulations).

Criteria are set by the banks themselves, and tested by the FIC during onsite examinations to verify if they comply with both FIC and FIU requirements.

Financial institutions provide feedback to the FIC and FIU when actions are taken.

To a large extent, these measures are required by the Financial Action Task Force (FATF) under the FATF 40 Recommendations.

The FIC’s last action which it took in relation to a US Government advisory, was several years ago when the US Government placed a freeze on accounts relating to Iran, Iranian officials, and related parties. There have been no other such actions taken in the past year, however, banks are required to check the stated UN SDN List and the US OFAC List on a transaction by transaction basis for opening accounts or upon receiving wire transfer funds. This is an ongoing and expected procedure by the banks; such procedure is tested when the FIC conducts its onsite examinations. The ongoing results of such examinations, for example, have found and confirmed that banks do follow this procedure for verification against the lists; Palau has a significant number of foreign guest workers whom are from Bangladesh. There are observed instances where names of individuals from Bangladesh would be a false-positive when checked against the Lists. These are then flagged, verified, and then accounts would be opened for such individuals if no significant issues are present.

(b) Observations on the implementation of the article

There is a mechanism for FIC to notify financial institutions and require immediate action on the basis of relevant warning or advisory from the US competent authorities. Furthermore, FIU may instruct reporting entities to take appropriate steps in relation to any information or report received by FIU to enforce compliance with MLPCA or to facilitate any investigation anticipated by FIU or a law enforcement agency (17 PNC §3334 (j)). The Palauan authorities indicated that, to the extent that any such report concerns

conduct that would constitute a criminal offence in Palau, this power would allow FIU to request reporting entities to apply (enhanced) due diligence measures to particular persons and accounts upon a foreign request.

Paragraph 3 of article 52

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

(a) Summary of information relevant to reviewing the implementation of the article

Section 3326 of the *Penal Code* provides that financial institutions and designated non-financial business and professions are to maintain all books and records with respect to their customers and transactions. Palau's laws on revenue and taxation also contain record-keeping requirements.

Penal Code of the Republic of Palau

§ 3326. Bookkeeping.

(a) *Financial institutions and designated non-financial business and professions shall maintain all books and records with respect to their customers and transactions as set forth in subsection (b) and shall ensure that such records and the underlying information are available on a timely basis to the Financial Intelligence Unit, the Financial Institution Commission and other competent authorities.*

(b) *The books and records referenced in subsection (a) shall include, at a minimum:*

(1) *account files, business correspondence, and copies of documents evidencing the identities of customers and beneficial owners obtained in accordance with the provisions in this Law, which shall be maintained for not less than five years after the business relationship has ended;*

(2) *records on transactions sufficient to reconstruct each individual transaction for both account holders and non-account holders, which shall be maintained for not less than five years from the date of the transaction;*

(3) *copies of all suspicious transaction reports made pursuant to 17 PNC section 3321 or 3322, including any accompanying documentation, which shall be maintained for at least five years from the date the report was made to the Financial Intelligence Unit.*

(4) *a written record of findings with respect to the transactions referenced in 17 PNC section 3314, which shall be maintained for not less than five years from the date of the transaction.*

(c) *This section shall not apply to lawyers and other legal professionals, except for subsection (b)(3) and (4) and the appropriate record keeping sufficient to provide proof to the Financial Intelligence Unit of compliance with the Preventive Measures and Monitoring required by [Subchapter II] of this Division.*

(d) *Where it is necessary and reasonable for the execution of this Law, the Financial Intelligence Unit shall have the power to extend the record retention period set out in subsection (b) in relation to a specific customer or transaction.*

§ 3327. Penalties.

(a) *Any person who intentionally or by criminal negligence fails to comply with [Subchapter III] of Chapter 33 of 17 PNC shall be guilty of a Class C felony or a maximum fine of ten thousand dollars (\$10,000), or both.*

(b) *In addition to the sanctions provided for under subsection (a), any person found guilty of an offense under subsection (a) may also be banned permanently or temporarily from pursuing the business or profession which provided opportunity for the offense to be committed.*

(c) *In addition to the penalties provided for under subsections (a) and (b), a financial institution or designated non-financial business and profession that intentionally or by criminal negligence fails to comply with the obligations under this chapter or any regulation issued in execution of this chapter may be subject to the measures and sanctions provided for under 17 PNC section 3329.*

Title 40 PNC Chapter 16

§ 1601. Records of transactions.

Every person, firm, corporation or association engaging in any transaction subject to a tax, fee or charge levied or imposed under this division shall keep a full and accurate record of each such transaction engaged in by him and such record shall be available for examination by the Director or his authorized representative for at least three years after the date of such transaction. Every business shall keep the following:

(a) a daily record of all cash receipts showing the date, total cash receipts, cash sales, payments on accounts receivable and miscellaneous receipts. Supporting documents comprised of cash register tapes, sales, slips, receipts, and other documents relating to cash received shall be retained in chronological sequence for examination.

(b) a daily record of credit sales showing, date, name of purchaser, invoice/receipt number, amount, and discount (if applicable). Supporting documents consisting of sales invoices or receipts shall be retained in chronological sequence for examination.

(c) a daily record of each disbursements showing date, payee, invoice number, amount discount (if applicable), and purpose of payment. Supporting documents consisting of cancelled checks, receipts, invoices, or other evidence of cash disbursed shall be maintained in chronological sequence for examination.

(d) such other records as the Director may require.

§ 1703. Business license revocation.

The Director in his discretion may suspend or revoke any business license upon a taxpayer's failure to comply with this division or regulations issued hereunder. The Director, under this section, is not subject to the provisions of the Administrative Procedure Act of chapter 1 of Title 6 of this Code.

§ 1704. General penalty.

Any person who wilfully violates any of the provisions of this division for which there is no other designated penalty, or any rule or regulations issued hereunder, shall, upon conviction, be imprisoned for a period of not more than one (1) year, fined not more than one thousand dollars (\$1,000), or both.

(b) Observations on the implementation of the article

Reporting entities shall keep relevant records, including records obtained during customer due diligence (CDD) and EDD, for at least five years following the end of the transaction or business relationship. However, the authorities indicated during the country visit that challenges remain with regard to compliance of financial institutions other than the three US commercial banks operating in Palau with the record-keeping requirements in case of EDD. **It was therefore recommended that Palau take appropriate measures to notify financial institutions of the identity of particular legal or natural persons to whose accounts such institutions are expected to apply enhanced security, and, in particular, extend the existing system so that it applies when relevant warnings or advisories are received from any State party; and ensure that financial institutions comply with relevant record keeping-requirements in the case of enhanced due diligence.**

Paragraph 4 of article 52

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

(a) Summary of information relevant to reviewing the implementation of the article

Section 3317 of the *Penal Code* requires any bank to have a physical presence in Palau. Financial institutions and designated non-financial business and professions are prohibited from entering into or continuing

business relations with banks in jurisdictions where they are not physically present and are not affiliated with a regulated financial group subject to effective consolidated supervision.

Penal Code of the Republic of Palau

§ 3301. Definitions.

In this chapter, unless a different meaning plainly is required.

...

(7) “Correspondent relationship” means the provision of banking, payment and other services by one financial institution (“the correspondent institution”) to another financial institution (“the respondent institution”) to enable the latter to provide services and products to its own customers.

§ 3317. Physical presence of financial institutions.

(a) *No bank may be established in the Republic of Palau if it maintains no physical presence within Palau and is not affiliated with a regulated financial group subject to effective consolidated supervision.*

(b) *Financial institutions and designated non-financial business and professions shall not enter into or continue business relations with banks in jurisdictions where they are not physically present and are not affiliated with a regulated financial group subject to effective consolidated supervision.*

(c) *Financial institutions and designated non-financial business and professions shall not enter into or continue business relations with a financial business in a foreign country that permits its accounts to be used by banks that are registered in jurisdictions where they are not physically present and are not affiliated with a regulated financial group subject to effective consolidated supervision.*

§ 3319. Penalties.

(a) *Any person who intentionally or by criminal negligence violates or fails to comply with or to act in accordance with the provisions of [Subchapter II] of this chapter, or any regulation implemented by the Financial Intelligence Unit in furtherance thereof, shall be guilty of a Class C felony or a maximum fine of ten thousand dollars (\$10,000), or both.*

(b) *In addition to the penalties provided for under subsection (a), any person found guilty of an offense under subsection (a) may also be banned permanently or temporarily from pursuing the business or profession which provided opportunity for the offense to be committed.*

The FIC does not entertain, at all, applicants whom state that their intent is to conduct banking business as an off-shore type entity. The FIC closed three shell banks in Palau from 2003 to 2005 (banks existing in Palau with an office, minimal staff, etc.). These banks were Allied Boston Bank, Inc., First Fidelity Banking Corporation, and Sunra Bank, Inc. The FIC took action to revoke all existing licenses to such entities (“paper banks” registered only with the Registrar of Corporations but with no physical presence) in 2005. The FIC effectively dissolved the corporate existence of 18 entities purporting to be banks in Palau, but do not have a physical presence.

(b) Observations on the implementation of the article

The establishment of “shell banks” is prohibited in Palau and financial institutions and DNFBPs are prohibited from entering into or continuing business relations with 1) banks in jurisdictions where they are not physically present and are not affiliated with a regulated financial group subject to effective consolidated supervision, or 2) a financial business in a foreign country that permits its accounts to be used by banks that are registered in jurisdictions where they are not physically present and are not affiliated with a regulated financial group subject to effective consolidated supervision.

Paragraph 5 of article 52

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The *Code of Ethics Act* contained in Title 33 of the PNC governs asset declaration systems. It is mandatory to disclose the financial interest acquired by public officials, as well as those of his/her spouse and dependent children. Palau's *Code of Ethics Act* functions as a code of conduct for elected officials and government employees of the national and state governments and includes prohibitions of specified conflicts of interest. The Act requires the filing by public officials of annual financial disclosure statements and by candidates for elective office of pre- and post-campaign disclosure statements. These reports and statements are public records open for public inspection and reproduction.

Section 3333(u) of the *Penal Code* outlines the duty of the Financial Intelligence Unit to cooperate, share information and enter into agreements or arrangements with foreign government institution or agency, or any international organization, in accordance with 17 PNC section 3334.

Title 33 PNC Chapter 6

§ 601. Definitions.

In this chapter:

(i) "Financial interest" means:

- (1) Any business entity in which the employee has a direct or indirect ownership interest, provided that interest has a fair market value of \$500 or more;
- (2) An employment, or prospective employment for which negotiations have begun;
- (3) Any real or personal property in which the employee has a direct or indirect ownership interest, including a leasehold interest, having a fair market value of \$1,000 or more;
- (4) Any source of income, including compensation and gifts, and loans from sources other than commercial lending institutions made in the normal course of business, aggregating \$500 or more in value received by or promised to the employee during the preceding 12 months;
- (5) A directorship or officership in a business;
- (6) Any source of contributions aggregating \$1,000 or more in value received by or promised to the employee during the preceding 4 years.

As used in this chapter, "indirect ownership interest" means any interest owned by the spouse or dependent children of the employee or by an agent on behalf of the employee, or the pro rata share of an interest owned by a business entity in which the employee or the employee's spouse or dependent children cumulatively own a 10 percent or greater interest.

(o) "Public official" means any national elected official, any minister, any director of a bureau or chief of a division of the national government, any state chief executive officer, any member of a state legislature, any member of a national or state board, commission or authority, and any procurement officer or other employee responsible for the award of contracts on behalf of the Republic, or any of its separate branches or subdivisions, or on behalf of any state, or any of its separate branches or subdivisions.

§ 605. Disclosure of financial interests.

(a) For the purpose of this section, the term "reporting period" refers to the preceding calendar year with respect to annual statements filed by public officials, and the preceding twelve-month period with respect to assuming office and leaving office statements filed by public officials and statements filed by candidates.

(b) No later than February 1 of each year, within 30 days of assuming office and within 30 days of leaving office, all public officials shall file with the Commission financial disclosure statements for the reporting period disclosing their financial interests. All candidates shall file the required statements no later than 60 days prior to the date of the election for state or national offices.

(c) Financial disclosure statements required by this section shall state for the reporting period:

- (1) The name and mailing address of each source and amount of income, including compensation and gifts from persons other than the public official's or candidate's spouse or children, totaling five hundred dollars (\$500) or more, received by or promised to the public official or candidate, provided that contributions, and salary and benefits from the national or any state government, need not be reported under this subsection.
- (2) The mailing address of every business entity incorporated, regulated, or licensed to conduct business in the Republic, and every business entity which plans to do business in the Republic or has done business in the Republic during the two years prior to the time the statement is required to be filed, in which the public official or candidate had a direct or indirect ownership interest having a fair market value of five hundred dollars (\$500) or more, and the amount of that interest.

(3) Every business entity in which the public official or candidate was an officer, director, partner, trustee, employee or held a position of management.

(4) The name of each creditor to whom the value of one thousand dollars (\$1,000) or more was owed at any time during the reporting period and the original amount and amount outstanding; provided that debts arising out of retail installment transactions for the purchase of consumer goods need not be disclosed.

(5) The location and the value of any real property in the Republic in which the public official or candidate held a direct or indirect ownership interest having a fair market value of one thousand dollars (\$1,000) or more, and, if the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration.

(6) For annual, assuming office and leaving office statements, the names of all persons who made contributions totaling one hundred dollars (\$100) or more to the public official during the preceding four years.

(d) Where a public official's or candidate's financial interests for a reporting period are identical to those reported on the last disclosure statement filed under subsection (c), the public official or candidate may file for that reporting period, in lieu of the disclosure statement required by subsection (c), a statement certifying that his or her financial interests have not changed since the filing of the last statement filed under subsection (c). All such statements shall comply with subsection (f) of this section.

(e) Where an amount is required to be reported, the person disclosing may indicate whether the amount is at least one thousand dollars (\$1,000) but less than ten thousand dollars (\$10,000); at least ten thousand dollars (\$10,000) but less than fifty thousand dollars (\$50,000); at least fifty thousand dollars (\$50,000) but less than one hundred thousand dollars (\$100,000); or one hundred thousand dollars (\$100,000) or more.

(f) The public official or candidate shall verify, under penalty of perjury, that he has used all reasonable diligence in preparing the disclosure statement and that to the best of his knowledge the statement is true and correct.

(g) The Election Commission, upon receipt of the nomination paper of any person seeking a state or national elective office, shall notify the Ethics Commission of the name of the candidate for state or national office and the date on which the person filed the nomination petition. The Election Commission, upon the expiration of the time allowed for filing, shall release to the public a list of all candidates who have failed to file financial disclosure statements.

(h) Any statement filed pursuant to this section may be amended at any time. Amending an incorrect or incomplete statement may be considered as evidence of good faith.

§ 606. Campaign statements.

(a) For each election at which a candidate is seeking elective office, the candidate shall file with the Commission a pre-election campaign statement which shall cover the period beginning with the date the candidate received his first contribution for the election and ending thirty (30) days before the election and shall be filed no later than twenty (20) days before the election.

(b) Each candidate who receives from a single source contributions totaling five hundred dollars (\$500) or more after the closing date of the pre-election campaign statement and before the election shall file a late contribution statement disclosing the total amount of such contributions, the name and address of the contributor, the amount of the contribution and the date of the contribution. The statement shall be delivered to the Commission for filing by personal delivery or facsimile transmission no later than forty eight (48) hours after the contribution is made. A late monetary contribution need not be reported nor shall it be deemed to be accepted if it is not cashed, negotiated and deposited and is returned within forty eight (48) hours of its receipt, and a late non-monetary contribution need not be reported and shall not be deemed to be accepted if it is not used in any way and is returned to the contributor within forty eight (48) hours of its receipt.

(c) For each election at which a candidate is seeking elective office, the candidate shall file with the Commission a post-election campaign statement which shall cover the entire period during which the candidate received contributions in connection with that election. The post-election campaign statement shall be filed no later than one hundred twenty (120) days after the election.

(d) Each pre-election and post-election campaign statement required by this chapter shall contain all of the following information:

(1) The total amount of contributions received and expenditures made during the period covered by the campaign statement;

- (2) If the cumulative amount of contributions (including loans) received from a person is one hundred dollars (\$100) or more, the person's name and address, and the date and amount of each contribution received from that person during the period covered by the campaign statement;
 - (3) For each person to whom an expenditure of five hundred dollars (\$500) or more has been made during the period covered by the campaign statement, the person's name and address, the amount of each expenditure and a brief description of the consideration for which each expenditure was made;
 - (4) A verification by the candidate, executed under penalty of perjury, that he has used all reasonable diligence in the preparation of the statement and that to the best of his knowledge the statement is true and correct; and
 - (5) Any other information that the Commission may reasonably deem necessary to fulfill the purposes of this chapter or to more fully inform citizens regarding the financing of campaigns in the Republic.
- (e) A monetary contribution need not be reported and shall not be deemed to be accepted if it is not cashed, negotiated or deposited and is returned to the contributor within seventy two (72) hours of its receipt, and a non-monetary contribution need not be reported and shall not be deemed to be accepted if it is not used in any way and is returned to the contributor within seventy two (72) hours of its receipt.
 - (f) Any statement filed pursuant to this section may be amended at any time. Amending an incorrect or incomplete statement may be considered as evidence of good faith.

§ 608. Ethics Commission established.

- (a) There is established a commission to be known as the Ethics Commission. The Commission shall consist of three (3) members appointed by the President with the advice and consent of the Senate. The term of each member shall be four (4) years. Members of the Commission shall hold no other public office or public employment. The chairman of the Commission shall be elected by a majority of the Commission. Members of the Commission may be removed by the President only for good cause. Vacancies shall be filled for the remainder of any unexpired term in the same manner as the original appointment. Commission members shall be compensated at a rate of thirty five dollars (\$35) for each meeting the Commission member attends.
- (b) The Commission shall adopt regulations to carry out the purposes of this chapter.
- (c) The Commission shall prescribe and supply the forms for statements and reports required by this chapter.
- (d) The Commission shall determine whether required documents have been filed and, if so, whether they comply on their face with the requirements of this chapter.
- (e) The Commission shall notify promptly all persons who have failed to file a report or statement in the form and at the time required by this chapter.
- (f) The Commission may employ staff, including legal counsel to advise and represent the Commission in actions filed by or against it, and to assist the Commission to issue advisory opinions upon the request of any person governed by this chapter as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the chapter.
- (g) The Commission shall initiate, receive, and consider charges concerning alleged violations of this chapter, initiate or make investigations, and hold hearings.
- (h) The Commission may subpoena witnesses, administer oaths and take testimony relating to matters before the Commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the Commission. Before the Commission may exercise any of the powers authorized herein with respect to any investigation or hearing, it shall, by a vote of a majority of its members, define the nature and scope of its inquiry.
- (i) On an affirmative vote of a majority of its members, the Commission shall have authority to bring civil actions on its own behalf, and take other actions consistent with the law to enforce the provisions of this chapter.
- (j) The members of the Commission and its staff may not take an active part in political management or in political campaigns during their term of office or employment, nor may they make contributions to political campaigns during their term of office or employment.

§ 609. Duties of the Public Auditor.

The Public Auditor shall conduct mandatory audits of campaign statements filed by candidates for the Office of President and Vice President of the Republic and shall conduct random audits of other statements filed under this chapter for the purpose of encouraging compliance with and detecting violations of this chapter. The Public Auditor shall conduct an audit of any statement filed under this chapter if requested to do so by the Commission, Attorney General or Special Prosecutor. The Public Auditor shall annually prepare and transmit to the Commission, Attorney General and Special Prosecutor a report containing the findings of the

Public Auditor with respect to the accuracy and completeness of each report and statement reviewed and his findings with respect to any statement or report that should have been but was not filed.

§ 611. Penalties.

(a) Criminal penalties. Any person who knowingly or wilfully violates any provision of this chapter is guilty of a misdemeanor. In addition to other penalties provided by law, a fine of up to ten thousand dollars (\$10,000) shall be imposed for each violation. For violations of the reporting requirements, a fine of up to three (3) times the amount the person failed to report properly may be imposed for conviction of each violation. Prosecution under this subsection must be commenced within four (4) years after the date on which the violation occurred, or in the case of a public official, four (4) years after the public official leaves government service. Prosecution under this section may be undertaken by the Attorney General or Special Prosecutor.

(b) Civil penalties. Any person who intentionally or negligently violates any provision of this chapter shall be liable in a civil action brought by the Commission, Attorney General, the Special Prosecutor or a citizen of the Republic for an amount not more than ten thousand dollars (\$10,000) or, in the case of a violation of the reporting provisions of this chapter, an amount not more than the amount or value not properly reported or ten thousand dollars (\$10,000), whichever is greater. If a judgment is entered against the defendant in an action brought by a citizen of the Republic, the plaintiff shall receive fifty percent (50%) of the amount recovered, and shall be entitled to recover from the defendant his costs of litigation, including reasonable attorneys' fees. Before a citizen may bring an action pursuant to this section, the citizen must submit a written request to the Commission, Attorney General and Special Prosecutor asking that they bring a civil action and a written statement setting [forth] the specific facts upon which the citizen bases his or her allegation. If the Commission, Attorney General and Special Prosecutor fail to bring a civil action within sixty (60) days after receipt of the written request, or bring an action that is later dismissed without prejudice to the filing of another action, the citizen may thereafter bring a civil action pursuant to this section. An action under this subsection must be commenced within four (4) years after the date on which the violation occurred.

(c) Any public official or candidate who fails to timely file any statement required by this chapter shall pay to the Commission a penalty of fifty dollars (\$50) per day for each day that the disclosure is delinquent. All funds received by the Commission shall be deposited in the national treasury.

(d) If two or more persons are responsible for any violation, they shall be jointly and severally liable.

§ 613. Public records.

Every report and statement filed pursuant to this chapter is a public record open for public inspection and reproduction during regular business hours of the Commission, commencing as soon as practicable, but in any event not later than three (3) business days after the day on which it was received. No conditions shall be imposed upon persons wishing to inspect reports and statements filed under this chapter. Copies shall be provided at a charge of twenty cents (\$.20) per page.

Penal Code of the Republic of Palau

§ 3333. Powers, duties and obligations of Financial Intelligence Unit.

To properly implement its functions under this Law, the Financial Intelligence Unit shall have the following powers and duties:

(a) to receive information and reports in accordance with its functions and, in relation to any information or report it has received, to make inquiries with or obtain from any financial institution any additional information the Financial Intelligence Unit deems necessary to carry out its functions, regardless of whether the requested person has made a report. The information requested shall be provided within the time limits and the form specified by the Financial Intelligence Unit;

(b) to analyze and assess any report or information received in accordance with its functions;

(c) for transactions or attempted transactions that occurred prior to the entry into force of this Act, to require financial institutions and designated non-financial business and professions to disclose records in the financial institution's or the designated non-financial business and profession's control, that pertain to the transaction or attempted transaction for a particular account for or by a particular person, and for a particular time period, if such disclosure would have been required to be reported under the provisions of this Act if it had been in effect during the particular time period in question;

(d) to enter the premises of any financial institution or designated non-financial business and profession during ordinary business hours to inspect any records kept pursuant to this Act and that are necessary to the

fulfillment of the functions of the Financial Intelligence Unit, and to ask any questions and make enquiries relating to and make notes and take copies of such records;

(e) in relation to any report or information it has received in accordance with its functions, to obtain or collect any information it deems necessary to carry out its function, whether or not publicly available, including commercially available databases or information and information stored in databases maintained by other government agencies that may hold relevant information such as Bureau of Revenue, Customs and Taxation, Bureau of Public Safety, Office of the Attorney General or other competent supervisory authorities;

(f) to act on behalf of the Republic of Palau in seeking information from any foreign government agency, foreign law enforcement agency, foreign supervisory authority and foreign auditing authority for purposes of this Law;

(g) to refer any report or information it has received in accordance with its functions to the appropriate law enforcement agency in the Republic of Palau if, on the basis of its analysis and assessment, the Financial Intelligence Unit has reasonable grounds to suspect that a transaction or attempted transaction involves proceeds of crime, or is related to or intended for financing of terrorism, or is terrorist property;

(h) to apprise the competent supervisory authority whenever it appears that a financial institution or designated non-financial business and profession, or any of its respective directors, officers or employees, is not complying or has not complied with the obligations under this Law or any regulation issued in execution of this Law;

(i) to destroy a suspicious transaction report received or collected on the expiry of six years after the date of receipt of the report if there has been no further activity or information relating to the report or the person named in the report, or six years from the date of the last activity relating to the person or report, whichever date is later;

(j) to instruct any financial institution or designated non-financial business and profession to take such steps as may be appropriate in relation to any information or report received by the Financial Intelligence Unit to enforce compliance with this Law or to facilitate any investigation anticipated by the Financial Intelligence Unit or a law enforcement agency;

(k) based on reasonable grounds to suspect that a transaction or attempted transaction involves proceeds of crime, or is related to or intended for financing of terrorism, or is terrorist property, to direct in writing that the financial institution or designated non-financial business and profession involved in the transaction either proceed or refrain from proceeding with the transaction or attempted transaction, for a period to be determined by the Financial Intelligence Unit.

(1) Any direction must not exceed five working days if the direction is in writing.

(2) Any direction given orally must not exceed 24 hours and must be confirmed in writing within 24 hours of the oral direction.

(3) Before the expiration of five days of giving the direction, the Financial Intelligence Unit may apply to the Supreme Court for an order to extend the period of the direction.

(l) to issue guidelines to financial institutions and designated non-financial business and professions on the manner of transaction reporting under Part III of this Chapter, including specification of reporting forms, content of transaction reports and the procedures that should be followed when reporting transactions;

(m) to provide feedback to the financial institution, designated non-financial business or profession and any relevant government department, office, agency or institution regarding outcomes relating to the reports or information provided by it under the provisions of this Law;

(n) to provide training programs for financial institutions and designated non-financial business and professions in relation to reporting obligations, and the identification of suspicious transactions;

(o) to conduct research into and compile and provide information and statistics on trends and developments in the area of money laundering, the financing of terrorism, and ways to detect, prevent and deter such activities;

(p) to educate the public and create awareness on matters relating to money laundering and the financing of terrorism;

(q) to cooperate and share information with other domestic competent authorities;

(r) to assist competent authorities to investigate or prosecute any offense;

(s) to provide information to and assist competent authorities to apply seizing and confiscation measures pursuant to 17 PNC Chapter 7; or to freeze property under 17 PNC Chapter 33, Part V;

(t) to advise financial institutions and designated non-financial business and professions of concerns about weaknesses in the anti-money laundering and countering financing of terrorism (AML/CFT) systems of other countries;

(u) to cooperate, share information and enter into agreements or arrangements with foreign government institution or agency, or any international organization, in accordance with 17 PNC section 3334; and

(v) to report in writing to the Governing Board of the Financial Institutions Commission of the Republic of Palau prior to the end of each fiscal year on the activities of the Financial Intelligence Unit during the previous year and the expected activities of the Financial Intelligence Unit during the subsequent year, without disclosing confidential information or information that may jeopardize an ongoing investigation or prosecution.

(w) to promulgate any rules and regulations as may be necessary to give effect to the intent of Chapter 33 of this title of the Palau National Code; in addition, any regulations previously promulgated by the Financial Intelligence Unit under the authority of the Money Laundering and Proceeds of Crime Act of 2001 shall remain in full force and effect as if promulgated under the authority of this Act.

§ 3334. Disclosure.

(a) The Financial Intelligence Unit may disclose any report or information to a foreign government agency or institution, or an international organization, that performs similar functions and is subject to similar secrecy obligations as the Financial Intelligence Unit –

(1) on such terms and conditions as are set out in an agreement or arrangement between the Financial Intelligence Unit and the foreign government institution or agency, or international organization, regarding the exchange of such information; or

(2) where such an agreement or arrangement has not been entered into, on such terms and conditions as may be agreed upon by the Financial Intelligence Unit and the foreign institution, agency or organization at the time of disclosure.

(b) The Financial Intelligence Unit, with the approval of the Governing Board of the Financial Institutions Commission, may enter into a formal agreement or arrangement, in writing, with a foreign government institution or agency, or international organization, with powers and duties similar to the Financial Intelligence Unit regarding the exchange of information between the Financial Intelligence Unit and that institution, agency or organization.

(c) Agreements or arrangements entered into under subsection (a) or the terms and conditions under subsection (b) shall include a stipulation that

(1) any information provided under this Section shall be used by the foreign institution, agency or organization only for the purpose of combating money laundering, financing of terrorism or any other felony. Any other use shall require consent of the Palauan authority providing the information; and

(2) any information provided under this Section may not be further disclosed or disseminated by the foreign institution, agency or organization to other authorities in the receiving State or elsewhere without the express consent of the Financial Intelligence Unit.

(d) A decision by the director of the Financial Intelligence Unit to analyze a matter or disseminate information under 17 PNC section 3333 is not subject to review except by the Governing Board of the Financial Institutions Commission.

(e) Any person who has duties for or within the Financial Intelligence Unit is required to keep confidential any information obtained or matter disclosed to him or her within the scope of these duties, even after the cessation of those duties, except as otherwise provided by this Law or any regulation issued in execution thereof, or as ordered by the court. Such persons may only use such information for purposes provided for and in accordance with this Law.

(f) Any person or past employee of the Financial Intelligence Unit or other person who has duties for or within the Financial Intelligence Unit who wilfully discloses information in contravention of subsection (e) shall be guilty of a Class C felony or a maximum fine of \$10,000, or both.

In the case of [Uehara v. ROP, 17 ROP 167 \(2010\)](#), a state legislator was convicted of violating misconduct-in-public-office law for failure to include rental income on property he owned on financial disclosure forms. Rental income generated from property that legislator did not own.

In [Remengesau v. ROP, 18 ROP 113 \(2011\)](#) the Ex-President of the Republic was convicted of violating misconduct-in-public-office law for failure to include property he owned on financial disclosure forms submitted during term of office and required to pay fine of \$156,400.

In *ROP v. Oilouch*, 20 ROP 109 (2103), a senator was found not to be in violation of the Ethics Act for failing to disclose contemporaneous employment with the Koror State Public Lands Authority.

(b) Observations on the implementation of the article

As described under article 8(5) above, under Title 33 of PNC, public officials specified in section 601(o) shall submit public statements of their financial interests and financial interests of their family members such as income, debts, owned business entities, real or personal property, and directorship or officership in a business to the Ethics Commission. The statements can be consulted at the Ethics Commission premises by anyone, and, as such, could be shared with foreign States upon request, according to the Palauan authorities.

Paragraph 6 of article 52

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

(a) Summary of information relevant to reviewing the implementation of the article

Section 655 of Title 40 of the PNC regarding procurement requires that public employees disclose conflicts of interests if they have “ownership, or involvement with any business which has bid on a government procurement actions recommendation, if the employee was involved in the preparation of any part of a program requirement or a purchase order request, or influenced the content of any specification or procurement standard, rendered advice, or participated in any other advisory capacity in any proceeding or application relative to the procurement of goods, services, or construction”. This report is made to the Attorney General.

Sections 602-607 of Title 33 PNC covers public officials’ financial interest reporting, campaign finance reporting, and mandates reporting of any conflict of interest that public employees may have. Failure to make honest disclosures -or not disclosing at all- is a misdemeanor under this section no matter how egregious the violation. Dishonesty in disclosing the required information could be prosecuted under the penal code at 17 PNC 4203: Unsworn falsification to authorities. However, this is also only a misdemeanor.

[Title 40 PNC Chapter 6](#)

§ 655. Employee disclosure requirements.

An employee shall disclose to the Attorney General or State Attorney, if any, and the Procurement Officer, on forms provided by the Procurement Officer all interests, ownership, or involvement with any business which has bid on a government procurement actions recommendation, if the employee was involved in the preparation of any part of a program requirement or a purchase order request, or influenced the content of any specification or procurement standard, rendered advice, or participated in any other advisory capacity in any proceeding or application relative to the procurement of goods, services, or construction.

[Title 33 PNC Chapter 6](#)

§ 604. Conflict of interest.

(a) No employee may take, participate in taking or use his or her government position to attempt to influence any official action where it is reasonably foreseeable that the action could have a material financial effect on that employee, or on any financial interest of that employee, that is different from the effect on the public generally. An employee who is unable to disqualify himself on any matter because he is the only person authorized by law to perform the official action will not be in violation of this subsection if he has complied with the disclosure requirements in section 605.

(b) No employee may acquire a financial interest in any business or other undertaking which he has reason to believe may be directly affected by official actions to be taken by him.

(c) No employee may assist any person for compensation or act in a representative capacity before any national or state government agency in any matter that relates in any way to the governmental duties of the employee.

(d) No employee may use or attempt to use the employee's official position to secure or grant privileges, exemptions, advantages, contracts, or treatment, for himself or others, including but not limited to the following:

(1) Seeking other employment or contracts for services for the employee by the use or attempted use of the employee's office or position; and

(2) Soliciting, receiving or accepting compensation or other consideration for the performance of the employee's official duties or responsibilities except as provided by law;

(3) Soliciting, receiving or accepting any gift or other item of monetary value from any person seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or from any person whose interests may be substantially affected by the performance or non performance of the employee's duties; provided that this subdivision shall not apply to wedding gifts, customary gifts and gifts exchanged between individuals on birthdays, holidays and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value.

(e) No employee may engage in any outside employment or other outside activity that is incompatible with the full and proper discharge of the employee's office or position. The Ethics Commission shall, for each government agency, designate those outside activities that are deemed to be incompatible with the duties of the employees of that agency.

§ 605. Disclosure of financial interests.

(a) For the purpose of this section, the term "reporting period" refers to the preceding calendar year with respect to annual statements filed by public officials, and the preceding twelve-month period with respect to assuming office and leaving office statements filed by public officials and statements filed by candidates.

(b) No later than February 1 of each year, within 30 days of assuming office and within 30 days of leaving office, all public officials shall file with the Commission financial disclosure statements for the reporting period disclosing their financial interests. All candidates shall file the required statements no later than 60 days prior to the date of the election for state or national offices.

(c) Financial disclosure statements required by this section shall state for the reporting period:

(1) The name and mailing address of each source and amount of income, including compensation and gifts from persons other than the public official's or candidate's spouse or children, totaling five hundred dollars (\$500) or more, received by or promised to the public official or candidate, provided that contributions, and salary and benefits from the national or any state government, need not be reported under this subsection.

(2) The mailing address of every business entity incorporated, regulated, or licensed to conduct business in the Republic, and every business entity which plans to do business in the Republic or has done business in the Republic during the two years prior to the time the statement is required to be filed, in which the public official or candidate had a direct or indirect ownership interest having a fair market value of five hundred dollars (\$500) or more, and the amount of that interest.

(3) Every business entity in which the public official or candidate was an officer, director, partner, trustee, employee or held a position of management.

(4) The name of each creditor to whom the value of one thousand dollars (\$1,000) or more was owed at any time during the reporting period and the original amount and amount outstanding; provided that debts arising out of retail installment transactions for the purchase of consumer goods need not be disclosed.

(5) The location and the value of any real property in the Republic in which the public official or candidate held a direct or indirect ownership interest having a fair market value of one thousand dollars (\$1,000) or more, and, if the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration.

(6) For annual, assuming office and leaving office statements, the names of all persons who made contributions totaling one hundred dollars (\$100) or more to the public official during the preceding four years.

(d) Where a public official's or candidate's financial interests for a reporting period are identical to those reported on the last disclosure statement filed under subsection (c), the public official or candidate may file for that reporting period, in lieu of the disclosure statement required by subsection (c), a statement certifying

that his or her financial interests have not changed since the filing of the last statement filed under subsection (c). All such statements shall comply with subsection (f) of this section.

(e) Where an amount is required to be reported, the person disclosing may indicate whether the amount is at least one thousand dollars (\$1,000) but less than ten thousand dollars (\$10,000); at least ten thousand dollars (\$10,000) but less than fifty thousand dollars (\$50,000); at least fifty thousand dollars (\$50,000) but less than one hundred thousand dollars (\$100,000); or one hundred thousand dollars (\$100,000) or more.

(f) The public official or candidate shall verify, under penalty of perjury, that he has used all reasonable diligence in preparing the disclosure statement and that to the best of his knowledge the statement is true and correct.

(g) The Election Commission, upon receipt of the nomination paper of any person seeking a state or national elective office, shall notify the Ethics Commission of the name of the candidate for state or national office and the date on which the person filed the nomination petition. The Election Commission, upon the expiration of the time allowed for filing, shall release to the public a list of all candidates who have failed to file financial disclosure statements.

(h) Any statement filed pursuant to this section may be amended at any time. Amending an incorrect or incomplete statement may be considered as evidence of good faith.

In the case of [Uehara v. ROP, 17 ROP 167 \(2010\)](#), a state legislator was convicted of violating misconduct-in-public-office law for failure to include rental income on property he owned on financial disclosure forms. Rental income generated from property that legislator did not own.

In [Remengesau v. ROP, 18 ROP 113 \(2011\)](#) the Ex-President of the Republic was convicted of violating misconduct-in-public-office law for failure to include property he owned on financial disclosure forms submitted during term of office and required to pay fine of \$156,400.

In [ROP v. Oilouch, 20 ROP 109 \(2103\)](#), a senator was found not to be in violation of the Ethics Act for failing to disclose contemporaneous employment with the Koror State Public Lands Authority.

(b) Observations on the implementation of the article

There is no requirement for Palauan public officials to disclose foreign accounts. **It was recommended that Palau consider introducing reporting and record-keeping requirements for appropriate public officials in relation to foreign accounts that they have an interest in or signature or other authority over.**

Article 53. Measures for direct recovery of property

Subparagraph (a) of article 53

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

There does not appear to be any legislative provision to provide legal standing of other States parties and permitting them to initiate civil action in the Palau courts. It is unclear whether States parties are automatically recognised as legal persons in Palau.

The case of [Orakiblai Clan v Government of the United States of America \[2011\] PWSC 30](#) provides some discussion around the common law doctrine of sovereign immunity.

(b) Observations on the implementation of the article

As explained during the country visit, section 507 of Title 14 PNC regulates who may bring civil action in Palauan courts. Even though there is no clear reference if foreign States are considered as legal persons, they will be treated as such and will be able to initiate civil proceedings. The reviewers accept the explanation but still believe that this issue should be clarified legislatively to remove any doubts in future. **Therefore, it was recommended that Palau adopt necessary legislative measures in order to clarify that other States parties have *locus standi* to (a) initiate civil action in the Palauan courts, and (b) claim, in confiscation procedures, ownership over assets acquired through the commission of a Convention offence (see below on art. 53 (c)).**

Subparagraph (b) of article 53

Each State Party shall, in accordance with its domestic law: ...

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(a) Summary of information relevant to reviewing the implementation of the article

The court can order restitutions for reasonable and verified losses as a result of offences. If a fine is also ordered, the restitution and compensation will have priority (sections 656 and 718, Title 17 PNC).

Penal Code of the Republic of Palau

§ 657. Victim restitution.

(a) As used in this section, “victim” includes any of the following:

- (1) The direct victim of a crime including a business entity, trust, or governmental entity;
- (2) If the victim dies as a result of the crime, a surviving relative of the victim as defined in 25 PNC Chapter 2; or
- (3) A governmental entity that has reimbursed the victim for losses arising as a result of the crime.

(b) The court shall order the defendant to make restitution for reasonable and verified losses suffered by the victim or victims as a result of the defendant’s offense when requested by the victim. If the court orders payment of a fine in addition to restitution or a compensation fee, or both, the payment of restitution and compensation fee shall have priority over the payment of the fine, and payment of restitution shall have priority over payment of a compensation fee.

(c) In ordering restitution, the court shall not consider the defendant’s financial ability to make restitution in determining the amount of restitution to order. The court, however, shall consider the defendant’s financial ability to make restitution for the purpose of establishing the time and manner of payment. The court shall specify the time and manner in which restitution is to be paid. Restitution shall be a dollar amount that is sufficient to reimburse any victim fully for losses, including but not limited to:

- (1) Full value of stolen or damaged property, as determined by replacement costs of like property, or the actual or estimated cost of repair, if repair is possible;
- (2) Medical expenses; and
- (3) Funeral and burial expenses incurred as a result of the crime.

(d) The restitution ordered shall not affect the right of a victim to recover in any manner provided by law; provided that any amount of restitution actually recovered by the victim under this section shall be deducted from any award.

§ 719. Victim restitution.

Nothing herein precludes a court from ordering restitution or reparation to a victim by the defendant as part of a sentence imposed for a violation of a covered offense.

Following are the details on the requests received and sent by Palau: Case Example: MLA request from Chinese Taipei resulting in informal assistance: In June 2014, Chinese Taipei made a formal MLA request to Palau to assist in locating a large sum of cash which was supposedly flown into Palau in bulk. The cash was believed to have been embezzled by a prominent individual and family members. The funds were not

located in Palau nor was there any evidence that the funds were ever flown into Palau. This case was informally responded to without delay.

Case Example: Response to informal request for information from Thailand: The Palau FIU was contacted by Thailand FIU in December 2016 regarding an individual that Thailand believed was residing in Palau who was the subject of a money laundering investigation. The suspect listed a Palau telephone number as his point of contact. Upon receipt of the inquiry, the Palau FIU accessed the immigration database to determine whether the targeted person had ever entered Palau. He had not and the Palau FIU reported as such.

There are no cases where other State parties have stood before the courts of the ROP to claim damages or otherwise receive compensation for asset recovery.

(b) Observations on the implementation of the article

17 PNC sections 656 and 718 give Palauan courts the power to order restitutions to victims for reasonable and verified losses as a result of offences. However, foreign States do not fall under the definition of a “victim” for these purposes.

Therefore, it was recommended that Palau amend the rules on the admissibility of civil action in order to give full effect to the rights of other States parties to reclaim property or seek compensation for damages.

Subparagraph (c) of article 53

Each State Party shall, in accordance with its domestic law: ...

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party’s claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Section 705(b)(2) of the *Penal Code* provides recognition of third party rights in confiscation procedures.

[Penal Code of the Republic of Palau](#)

Chapter 7: Forfeiture

§ 702. Definitions.

In this chapter, unless a different meaning plainly is required:

(8) “Owner” means a person who is not a secured party and who has an interest in property, whether legal or equitable. A purported interest that is not in compliance with any statute requiring its recordation or reflection in public records in order to perfect the interest against a bona fide purchaser for value shall not be recognized as an interest against the Republic of Palau in an action pursuant to this chapter. An owner with power to convey property binds other owners, and a spouse binds the person’s spouse, by any act or omission.

(9) “Person” includes any individual or entity capable of holding a legal or beneficial interest in property.

§ 705. Property subject to forfeiture; exemption.

(a) The following is subject to forfeiture:

- (1) Property described in a statute authorizing forfeiture;
- (2) Property used or intended for use in the commission of, attempt to commit, or conspiracy to commit a covered offense, or which facilitated or assisted such activity;
- (3) Any firearm that is subject to forfeiture under any section of the PNC or that is visibly carried during, or used in furtherance, of the commission, attempt to commit, or conspiracy to commit a covered offense, or any firearm found in proximity to contraband or to instrumentalities of an offense;
- (4) Contraband shall be seized and summarily forfeited to the Republic of Palau without regard to the procedures set forth in this chapter;

- (5) Any proceeds or other property acquired, maintained, or produced by means of or as a result of the commission of the covered offense;
- (6) Any property derived from any proceeds that were obtained directly or indirectly from the commission of a covered offense;
- (7) Any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise that has been established, participated in, operated, controlled, or conducted in order to commit a covered offense;
- (8) All books, records, bank statements, accounting records, microfilms, tapes, computer data, or other data which are used, intended for use, or which facilitated or assisted in the commission of a covered offense, or which document the use of the proceeds of a covered offense.

(b) Except that:

- (1) Real property, or an interest therein, may be forfeited under the provisions of this chapter only in cases in which the covered offense is chargeable as a felony offense under the laws of the Republic of Palau;
 - (2) No property shall be forfeited under this chapter to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge and consent of that owner;
 - (3) No conveyance used by any person as a common carrier in the transaction of a business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
 - (4) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent; and
 - (5) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission.
- (c) A person who knowingly violates a seizure for forfeiture order by conveying, disposing of or otherwise dealing with property that is subject to the order commits Class C felony and may be fined a maximum fine of \$20,000.

(d) Where a seizure for forfeiture order is entered against property and the property is disposed of, or otherwise dealt with, in violation of the order, the attorney general may apply to the court for an order that the disposition, conveyance or dealing be set aside unless the disposition, conveyance or dealing was for sufficient consideration or in favor of a person who acted in good faith and without notice.

(e) Where the attorney general makes an application under subsection (d) in relation to a disposition, conveyance or dealing, the court may set aside the disposition, conveyance or dealing as from the day on which the disposition, conveyance or dealing took place; or as from the day of the order was issued and declare the respective rights of any person who acquired interests in the property on or after the day on which the disposition, conveyance or dealing took place and before the day of the order under this section was issued.

§ 706. Excessive forfeitures.

The court shall limit the scope of a forfeiture judgment issued pursuant to 17 PNC section 705(a)(2) to the extent the court finds the effect of the forfeiture is grossly disproportionate to the nature and severity of the owner's conduct. In determining whether forfeiture is grossly disproportionate, the court may consider:

- (a) The degree to which the property was used to facilitate the conduct that subjects property to forfeiture and the importance of the property to the conduct;*
- (b) The gain received or expected by an owner from the conduct that subjects property to forfeiture and the value of the property subject to forfeiture;*
- (c) The nature and extent of the owner's culpability; and*
- (d) The owner's effort to prevent the conduct or assist in prosecution.*

There are no examples in Palau on State parties pursuing claims for ownership in confiscation proceedings.

(b) Observations on the implementation of the article

17 PNC section 705(b)(2) recognizes rights of legitimate property owners (i.e. any individual or entity capable of holding a legal or beneficial interest in property) in confiscation procedures. There are however no examples of foreign States pursuing claims for ownership in confiscation proceedings.

Please also see the recommendation under article 53 (a) above.

(c) Technical assistance needs

Palau would benefit from training on both criminal and civil forfeiture proceedings and, especially, investigations. In particular, trainings on how to investigate the entire process leading up to the forfeiture proceedings. Specific training to Palauan law would be most beneficial.

Palau has benefitted from many trainings from the United Nations and other organizations.

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

Subparagraph 1 (a) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Palau's *Mutual Legal Assistance in Criminal Matters Act* of 2001 (contained in Title 18 Chapter 13) 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.

Under the 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 1302 of the 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.

Section 1320 provides for the enforcement of foreign confiscation orders. Pursuant to this section, 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.⁷

[Title 18 PNC Chapter 13](#)

§ 1302. Definitions.

Unless the subject or context otherwise requires, in this chapter:

...

(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;

...

(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

⁷ International Monetary Fund, Palau: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism, 2009, p 138.

legitimate bona fide purchaser or owner of property, real or otherwise, without notice of any illegal interest, in such property located in the Republic;

(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;

§ 1320. *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.

The Palau FIU has received two requests for information from foreign FIUs in the period 2014 to 2017 (one from Chinese Taipei received in June 2014 and the second from Thailand in 2016). Both requests were responded to in a timely manner.

During the same period of time, Palau has made four requests to the Philippines for information in support of ongoing investigations by the NEA into possible Drug Trafficking and ML. Information sought related to the transfer of funds to certain individuals in that jurisdiction, related bank accounts and telephone numbers. All requests were responded to in reasonable time. No foreign requests or requests made by the FIU were declined.

(b) Observations on the implementation of the article

The mechanism for the enforcement of foreign confiscation orders against proceeds of a serious offence is provided in 18 PNC section 1320. Upon receipt of a request for the enforcement of a foreign order, the Attorney General may apply to the Supreme Court to enter and enforce the order as if it was a domestic order. The detailed procedure for the enforcement of domestic confiscation orders is provided in 17 PNC chapter 7.

A serious offence is defined as, *inter alia*, any offence which, had it occurred in Palau, would have constituted a criminal offence punishable by imprisonment for more than one year (18 PNC section 1302(P)). All offences established under the Convention carry terms of imprisonment longer than one year. Finally, it was confirmed during the country visit that Palau has yet to receive any requests for the enforcement of confiscation orders from another country.

Subparagraph 1 (b) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(a) Summary of information relevant to reviewing the implementation of the article

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 1302 of Title 18, 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.

This would cover the offence of money laundering.

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.⁸

[Title 18 PNC Chapter 13](#)

§ 1302. Definitions.

Unless the subject or context otherwise requires, in this chapter:

...

(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;

§ 1311. 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 a 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

⁸ International Monetary Fund, Palau: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism, 2009, p 136.

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.

§ 1312. Saving provision for other requests or assistance in criminal matters.

Nothing in this chapter shall limit:

(a) the power of the Attorney General, apart from this chapter, 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 chapter, to make requests to foreign states or act on requests from foreign states for forms of international assistance other than those specified in section 1313; 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.

Penal Code of the Republic of Palau

§ 3301. Money laundering.

(a) Any person commits the offense of money laundering who knowing, suspecting or having reasonable grounds to suspect that property is the proceeds of crime,

(1) acquires, possesses or uses such property;

(2) conceals or disguises the true nature, source, location, disposition, movement, ownership or any rights with respect to such property;

(3) converts, transfers or engages in a transaction of such property; or

(4) enters into or becomes concerned in an arrangement with the intention to facilitate, by whatever means, the acquisition, retention, use or control of such property.

(b) Money laundering is a Class A felony.

(c) Notwithstanding 17 PNC section 650, any person convicted of an offense under this chapter shall subject to a maximum fine of twice the amount laundered, twice the value of the benefit derived by the commission of the offense, or \$500,000, whichever is greater.

(d) In assessing the value of the benefit derived by a defendant from the commission of an offense, the court may treat as property of the defendant any property that the court finds is subject to the effective control of the defendant, whether or not the defendant has any legal or equitable interest in the property, or any right, power or privilege in connection with the property. The court may take into consideration, *inter alia*, shareholdings in, debentures over, or directorships in any company, corporation or commercial enterprise that has an interest, whether direct or indirect, in the property, and any trust that has any relationship to the property.

(e) Any element of the offense of money laundering that occurs outside the national territory of the Republic of Palau may be utilized to prove the offense of money laundering, and a predicate offense may include actions committed outside the national territory of the Republic of Palau, if such actions would have constituted an offense in the Republic of Palau.

The Palau FIU was contacted by Thailand FIU in December 2016 regarding an individual that Thailand believed was residing in Palau who was the subject of a money laundering investigation. The suspect listed a Palau telephone number as his point of contact. Upon receipt of the inquiry, the Palau FIU accessed the immigration database to determine whether the targeted person had ever entered Palau. He had not and the Palau FIU reported the same directly to the Thailand authorities. 401. The U.S. and Palau have a close relationship based on The Compact of Free Association (COFA) which was signed between the two jurisdictions in 1994. Based on this relationship, Palau has reached out to both the U.S. Secret Service and Federal Bureau of Investigation (FBI) for assistance in the investigation of smuggled bank card skimming devices and U.S. counterfeit money in 2016.16

In April 2016, an individual, travelling on a Romanian passport, was the intended recipient of a Federal Express package to be delivered to a local hotel address. Upon inspection of the package, Palau's Custom's Officers discovered that the package was a purported used DVD player which contained the mechanism for bank card skimming devices for three of the financial institutions in Palau. The Palau FIU reached out to the FBI in Saipan for assistance as they were aware of a large card skimming operation that had occurred in Saipan previously. The description, photographs and identity of individuals was shared with U.S. authorities however the suspects in Palau escaped arrest and prosecution.

In June 2016, a refugee from Syria, Mr X, currently living in the Philippines (travelling on a Philippines Refugee Passport) came to Palau with USD60,000 of U.S. counterfeit USD100 dollar bills with another person from Jordan; Mr Y. Mr X was caught with the counterfeit currency. Cooperation was obtained from the U.S. Secret Service which sent an agent to Palau at the request of the Palau FIU and assisted Palau's CID to investigate the matter. It was suspected that the two individuals were engaged in possible human trafficking and smuggling counterfeit currency. Mr Y remained on-island until the case was cleared. During the investigation, the FIU discovered a number of text and email messages on the cell phone belonging to Mr Y which detailed a number of detailed arms transactions (no details on any investigation related to this was provided). The cell phone was turned over to the U.S. FBI for analysis. Mr X was prosecuted and pled guilty to one count of counterfeit currency possession, sentenced to one year probation and allowed to leave Palau.

(b) Observations on the implementation of the article

As confirmed during the country visit, Palau can adjudicate money laundering offences upon foreign request and confiscate related proceeds i.e. property forming the subject of the offence, including income and other benefits obtained therefrom (17 PNC section 3848)). However, there has been no cases where Palau was requested to provide this type of assistance to another State.

Subparagraph 1 (c) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

(a) Summary of information relevant to reviewing the implementation of the article

Pursuant section 1320 of Title 18 of the PNC, 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.⁹

Title 18 PNC Chapter 13

§ 1302. Definitions.

Unless the subject or context otherwise requires, in this chapter:

(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;

⁹ International Monetary Fund, Palau: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism, 2009, p 138.

- (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;

§ 1320. 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.

See answer to Article 54, sub-paragraph 1(b), question 3, above.

(b) Observations on the implementation of the article

Foreign confiscation orders made in the absence of conviction due to the death or flight of the defendant may be enforced in Palau (18 PNC section 1320(c)(2)). However, there has been no cases where Palau was requested to provide this type of assistance to another State.

Subparagraph 2 (a) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(a) Summary of information relevant to reviewing the implementation of the article

Section 1315(j) of Title 18 PNC 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. The *Penal Code* also contains provisions on freezing.

Title 18 PNC Chapter 13

§ 1315. 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, anything, 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 law 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.

Penal Code of the Republic of Palau

§ 707. Seizure of property.

- (a) Personal property subject to forfeiture under this chapter may be seized for forfeiture by a law enforcement officer:

- (1) On process issued pursuant to the rules of civil procedure or the provisions of this chapter including a seizure warrant;
- (2) By making a seizure for forfeiture on property seized on process issued pursuant to law; or
- (3) By making a seizure for forfeiture without court process as follows:
 - (A) The seizure for forfeiture is of property seized incident to an arrest or search;
 - (B) The property subject to seizure for forfeiture has been the subject of a prior judgment in favor of the Republic of Palau or any state thereof in forfeiture proceeding;
 - (C) The law enforcement officer has probable cause to believe that the property seized for forfeiture is directly or indirectly dangerous to health or safety;
 - (D) The law enforcement officer has probable cause to believe that the property is subject to forfeiture; or
 - (E) The seizure for forfeiture is of perishable natural resources, which may be sold prior to forfeiture proceedings, and the proceeds deposited with the Forfeited Property Fund established pursuant to 17 PNC section 716.

(b) Real property subject to forfeiture under this chapter may be seized for forfeiture by a law enforcement officer pursuant to court order following a pre-seizure hearing in the trial division of the Supreme Court. Notice of the pre-seizure hearing is to be made to the owners and interest-holders pursuant to 17 PNC section 708. The court shall order the real property in question to be seized for forfeiture if it finds probable cause that the real property is subject to forfeiture under any provision of the laws of the Republic of Palau.

(c) In determining probable cause for seizure, the fact that a firearm, money, or any negotiable instrument was found in proximity to contraband or to instrumentalities of an offense gives rise to an inference that the money, or instrument was the proceeds of contraband or that the firearm, money or instrument was used or intended to be used to facilitate commission of the offense.

§ 708. Powers and duties of law enforcement officers and agencies.

(a) In the event of a seizure for forfeiture under 17 PNC section 707, the property is not subject to replevin, conveyance, sequestration, or attachment but is deemed to be in the custody of the law enforcement agency making the seizure for forfeiture. The seizing agency or the attorney general may authorize the release of the seizure for forfeiture on the property if forfeiture or retention is unnecessary, may transfer the property to any other national, state, or municipal agency or may transfer the action to another prosecuting agency by discontinuing forfeiture proceedings in favor of forfeiture proceedings initiated by the other agency. An action pursuant to this chapter shall be consolidated with any other action or proceeding pursuant to this chapter relating to the same property upon motion by the attorney general or prosecuting agency in either action.

(b) If property is seized for forfeiture under 17 PNC section 707 pending forfeiture and final disposition, the seizing agency may do any of the following:

- (1) Place the property under constructive seizure by posting notice of seizure for forfeiture on the property or by filing notice of seizure for forfeiture or notice of pending forfeiture in any appropriate public record relating to the property;
- (2) Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, deposit it in an interest bearing account;
- (3) Remove the property to a place designated by the court; or
- (4) Provide for another agency to take custody of the property and remove it to an appropriate location within the jurisdiction of the court.

(c) As soon as practicable after seizure for forfeiture, the seizing agency shall conduct an inventory and estimate the value of the property seized. Within twenty days after seizure for forfeiture the seizing agency shall make reasonable efforts to give notice of seizure for forfeiture in the manner provided in 17 PNC section 709 to all parties known to have an interest in the seized property.

(d) In the event of a seizure for forfeiture under 17 PNC section 707, the seizing agency shall send to the attorney general a written request for forfeiture within thirty days, which shall include a statement of facts and circumstances of the seizure, the appraised or estimated value of the property, and a summary of the facts relied on for forfeiture.

In November, 2016 Palau requested assistance from USSS in identifying two Chinese individuals who were caught on camera installing a card skimming device onto a bank ATM machine. USSS was unable to identify the individuals in the video but referred Palau LEA to US Department of Homeland Security which notified Palau that one of the individuals was denied entry into Saipan and provided Palau with a copy of his passport.

In June, 2014 Palau requested assistance from the FBI to conduct a polygraph test on three individuals that were suspected of murdering an elderly lady. FBI conducted the polygraph test and the individuals were convicted of murdering the elderly lady. US Naval Criminal Investigation Division (NCIS).

In March, 2010 US NCIS requested Palau to track down and detain a person of interest in an ongoing murder investigation. NCIS requested for authority to enter Palau and to interrogate the individual. Palau LEA tracked down the individual in the southern state of Anguar and detained the individual. NCIS interrogated the individual in Palau.

(b) Observations on the implementation of the article

The mechanism for the enforcement of foreign restraining orders against proceeds of a serious offence is provided in 18 PNC section 1320. Upon receipt of a request for the enforcement of a foreign order, the Attorney General may apply to the Supreme Court to enter and enforce the order as if it was a domestic order. The detailed procedure for the enforcement of domestic restraining orders in relation to foreign proceedings is provided in 17 PNC chapter 7. A serious offence is defined as, *inter alia*, any offence which, had it occurred in Palau, would have constituted a criminal offense punishable by imprisonment for more than one year (18 PNC section 1302(P)). All offences established under the Convention carry terms of imprisonment longer than one year.

However, there has been no cases where Palau was requested to provide this type of assistance to another State.

Subparagraph 2 (b) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(a) Summary of information relevant to reviewing the implementation of the article

Section 1315(j) 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. This may include freezing or seizure orders issued by a foreign court.

[Title 18 PNC Chapter 13](#)

§ 1315. *Foreign requests for an evidence-gathering order or a search warrant.*

...

(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.

MLA request from Chinese Taipei resulting in informal assistance In June 2014, Chinese Taipei made a formal MLA request to Palau to assist in locating a large sum of cash which was supposedly flown into Palau in bulk. The cash was believed to have been embezzled by a prominent individual and family members. The funds were not located in Palau nor was there any evidence that the funds were ever flown into Palau. This case was informally responded to without delay.

The Palau FIU was contacted by Thailand FIU in December 2016 regarding an individual that Thailand believed was residing in Palau who was the subject of a money laundering investigation. The suspect listed a Palau telephone number as his point of contact. Upon receipt of the inquiry, the Palau FIU accessed the immigration database to determine whether the targeted person had ever entered Palau. He had not and the

Palau FIU reported the same directly to the Thailand authorities. 401. The U.S. and Palau have a close relationship based on The Compact of Free Association (COFA) which was signed between the two jurisdictions in 1994. Based on this relationship, Palau has reached out to both the U.S. Secret Service and Federal Bureau of Investigation (FBI) for assistance in the investigation of smuggled bank card skimming devices and U.S. counterfeit money in 2016.

In April 2016, an individual, travelling on a Romanian passport, was the intended recipient of a Federal Express package to be delivered to a local hotel address. Upon inspection of the package, Palau's Custom's Officers discovered that the package was a purported used DVD player which contained the mechanism for bank card skimming devices for three of the financial institutions in Palau. The Palau FIU reached out to the FBI in Saipan for assistance as they were aware of a large card skimming operation that had occurred in Saipan previously. The description, photographs and identity of individuals was shared with U.S. authorities however the suspects in Palau escaped arrest and prosecution.

(b) Observations on the implementation of the article

The Attorney General may apply to the Supreme Court to obtain a restraining order upon foreign request where criminal proceedings have begun in the foreign State in respect of a serious offence and there is probable cause to believe that the property is located in Palau. In case of foreign requests for assistance in locating proceeds of a serious offence, the Attorney General may authorize any application of MLPCA for the purpose of acquiring the information sought (18 PNC section 1321). However, there has been no cases where Palau was requested to provide this type of assistance to another State.

Subparagraph 2 (c) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

(a) Summary of information relevant to reviewing the implementation of the article

Any request for mutual legal assistance must relate to the commission of a serious offense. 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.¹⁰

(b) Observations on the implementation of the article

It is not possible to take proactive measures to preserve property in anticipation of a foreign freezing or confiscation order. **It was recommended that Palau consider taking additional measures to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.**

(c) Challenges

The limited number of requests for MLA (2) and no requests made by Palau are in line with the context and size of Palau. Palau has a strong legal framework though lacks formal MLA procedures and guidelines. Results and the structured nature of Palauan legislation suggest that this limited deficiency has not had any impact on effectiveness. Palau has only made one request for extradition which was progressing positively and nothing suggests this would not have been formally concluded if the suspect had not voluntarily agreed

¹⁰ International Monetary Fund, Palau: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism, 2009, p 139.

to return to Palau. While Palau has had challenges on occasion facilitating positive engagement with foreign jurisdictions, they have responded effectively to two informal requests received from Chinese Taipei and Thailand, a request from the Philippines and multiple requests from the US. There are some deficiencies in the framework such as Palau being unable to share adequate, accurate and current basic and BO information on all types of legal persons in Palau and no procedures or guidelines (while not having an impact to date, they will be necessary to support any potential future complex cases). Noting the context and the successful outcomes.

(d) Technical assistance needs

Palau has limited resources for implementation, limited expertise and skill, and could benefit from training and other resources.

Article 55. International cooperation for purposes of confiscation

Paragraph 1 of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Section 1320 of Title 18 of the PNC outlines the procedure for submitting a foreign confiscation request.

[Title 18 PNC Chapter 13](#)

§ 1302. Definitions.

Unless the subject or context otherwise requires, in this chapter:

(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;

(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;

§ 1320. 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.

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.¹¹

(b) Observations on the implementation of the article

As observed under article 54(1) above, Palau has adopted the necessary legal basis to assist other States in confiscation proceedings. However, there has been no relevant practice to date to establish compliance with the provision under review. Furthermore, it is noted that the Attorney General has a discretion (“may apply”) to apply to the Supreme Court in case of a foreign request whereas the provision uses mandatory language (“shall submit”). **Therefore, it was recommended that Palau ensure that the Attorney General exercises their discretion under 18 PNC section 1320 in a way that observes the binding obligations under article 55(1) of the Convention.**

Paragraph 2 of article 55

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Section 1321 provides that 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. The Money Laundering and Proceeds of Crime Act is still in force and not repealed by the Penal Code.

“Proceeds of crime” is defined as the “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,

¹¹ International Monetary Fund, Palau: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism, 2009.

as well as income, capital or other economic gains derived or realized from such property at any time since the offense.”

Title 18 PNC Chapter 13

Chapter 13 Mutual Assistance in Criminal Matters

§ 1302. Definitions.

Unless the subject or context otherwise requires, in this chapter:

(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;

(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 bona fide purchaser or owner of property, real or otherwise, without notice of any illegal interest, in such property located in the Republic;

(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;

§ 1319. 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.

§ 1321. 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.

Penal Code of the Republic of Palau

§ 701. Definitions.

In this chapter, unless a different meaning plainly is required:

(11) “Proceeds” means anything of value, derived directly or indirectly from or realized through unlawful activity.

(12) “Property” means real property, including things growing on, affixed to, and found on land; tangible and intangible personal property, including currency, instruments, vehicles, boats, aircraft or any other kind of conveyance; legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in such assets, including but not limited to bank credits, deposits and other financial resources, travelers checks, bank checks, money orders, securities, bonds, drafts, letters of credits; and all rights, privileges, interests, dividends, claims, and securities pertaining to such property whether such property is situated in the Republic of Palau or elsewhere.

Chapter 33 Money Laundering

PART I Money Laundering

§ 3305. Forfeiture.

Any property offered, conferred, agreed to be conferred, or accepted as a benefit, pecuniary benefit, or compensation in the commission of money laundering is forfeited to the Republic of Palau, subject to the requirements of 17 PNC Chapter 7 of this Penal Code.

PART V. Freezing of Property

§ 3340. *Freezing of property.*

(a) Any person shall freeze the property belonging to or wholly or jointly owned, held or controlled, directly or indirectly, by a person, group or entity designated by the United Nations Sanctions Committee, or belonging to or acting on behalf or at the direction of such a person, group or entity.

(b) Any person shall freeze the property belonging to or wholly or jointly owned, held or controlled, directly or indirectly, by any person, group or entity listed by the attorney general under 17 PNC section 3343, or any person, group or entity acting on behalf or at the direction of such person, group or entity listed under 17 PNC section 3343.

(c) Freezing measures pursuant to subsections (a) and (b) shall be taken without delay and prior notice to the person, group or entity designated by a United Nations Sanctions Committee or listed by the attorney general under 17 PNC section 3343.

DIVISION FIVE. OFFENSES AGAINST PUBLIC ADMINISTRATION

Chapter 38. General Provisions Relating to Offenses Against Public Administration

§ 3801. *Forfeiture of property used or obtained as benefit or pecuniary benefit in the commission of an offense defined in this division.*

Any property offered, conferred, agreed to be conferred, or accepted as a benefit, pecuniary benefit, or compensation in the commission of an offense defined in this division is forfeited, subject to the requirements of 17 PNC Chapter 7 of this Penal Code, to the Republic of Palau.

(b) Observations on the implementation of the article

As observed under article 54(2) above, Palau has adopted the necessary legal basis to assist other States in freezing and seizure proceedings. However, there has been no relevant practice to date to establish compliance with the provision under review. Furthermore, it is noted that the Attorney General has a discretion (“may”) to apply to the Supreme Court in case of a foreign request whereas the provision uses mandatory language (“shall”) in such cases. **It was therefore recommended that Palau ensure that the Attorney General exercises their discretion under 18 PNC section 1320 in a way that observes the binding obligations under article 55(2) of the Convention.**

Paragraph 3 of article 55

3. *The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:*

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

(a) Summary of information relevant to reviewing the implementation of the article

Section 1314 of Title 18 PNC lists the information that should be contained in a request for assistance. Subsection (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.¹²

Title 18 PNC Chapter 13

§ 1314. 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 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).

§ 1320. 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.

¹² International Monetary Fund, Palau: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism, 2009.

(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.

Palau has not made any procedures for requesting State parties publicly available.

(b) Observations on the implementation of the article

The requirements regarding the contents and manner of transmission of foreign MLA requests are provided in 18 PNC sections 1311 and 1314. MLA requests may be granted, if necessary, after consultation, even if the request does not comply with these requirements. As confirmed during the country visit, in practice, the Attorney General will informally liaise with the requesting State beforehand and make every effort to ensure that a complete request is submitted.

Paragraph 4 of article 55

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Chapter 13 of Title 18 of the PNC contains Palau's laws on Mutual Assistance in Criminal Matters. Section 1301 provides that the chapter applies to mutual assistance in criminal matters between the Republic 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.

Title 18 PNC Chapter 13

§ 1301. Application.

This chapter shall apply in relation to mutual assistance in criminal matters between the Republic 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.

(b) Observations on the implementation of the article

Palau has never had any case when a foreign State requested the enforcement of restraining or confiscation orders.

Paragraph 5 of article 55

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

(a) Summary of information relevant to reviewing the implementation of the article

Copies were attached to the UNCAC self-assessment checklist of Palau.

(b) Observations on the implementation of the article

Palau shared links to the cited legislation.

Paragraph 6 of article 55

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

(a) Summary of information relevant to reviewing the implementation of the article

Chapter 13 of Title 18 of the PNC contains Palau's laws on Mutual Assistance in Criminal Matters. Section 1301 provides that the chapter applies to mutual assistance in criminal matters between the Republic 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.

[Title 18 PNC Chapter 13](#)

§ 1301. Application.

This chapter shall apply in relation to mutual assistance in criminal matters between the Republic 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.

(b) Observations on the implementation of the article

As explained above, Palau does not require a treaty to provide assistance to other States in confiscation proceedings.

Paragraph 7 of article 55

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value.

(a) Summary of information relevant to reviewing the implementation of the article

Section 1311 of *Title 18 PNC* provides that 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.

[Title 18 PNC Chapter 13](#)

§ 1311. 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 a 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.

§ 1313. Mutual legal assistance requests by the Republic.

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 chapter.

(b) Observations on the implementation of the article

As explained above, mutual legal assistance requests may be granted, if necessary, after consultation, even if the request does not comply with the requirements established in MACMA (18 PNC sections 1311 and 1314). There are no *de minimis* thresholds, but 18 PNC section 1311 does stipulate that any request for legal assistance needs to relate to a “serious offence” in order for it to be entertained.

Paragraph 8 of article 55

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

(a) Summary of information relevant to reviewing the implementation of the article

Section 1311(b)(3) of Title 18 of the PNC provides that the Attorney General may 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.

Title 18 PNC Chapter 13

§ 1311. 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 a 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.

§ 1314. 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 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).

(b) Observations on the implementation of the article

The Penal Code gives the authority to the Attorney General to consult with the competent authority of the requesting State before postponing the request for the reasons set out in the Penal Code. It was confirmed during the country visit that, in practice, the Attorney General will informally liaise with the requesting State beforehand and make every effort to ensure that a complete request is submitted.

Paragraph 9 of article 55

9. *The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.*

(a) Summary of information relevant to reviewing the implementation of the article

Section 705 (b) of the *Penal Code* provides that no property shall be forfeited under this chapter to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge and consent of that owner. Further, no conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent.

Penal Code of the Republic of Palau

Chapter 7: Forfeiture

§ 705. Property subject to forfeiture; exemption.

(a) The following is subject to forfeiture:

- (1) Property described in a statute authorizing forfeiture;*
- (2) Property used or intended for use in the commission of, attempt to commit, or conspiracy to commit a covered offense, or which facilitated or assisted such activity;*
- (3) Any firearm that is subject to forfeiture under any section of the PNC or that is visibly carried during, or used in furtherance, of the commission, attempt to commit, or conspiracy to commit a covered offense, or any firearm found in proximity to contraband or to instrumentalities of an offense;*

- (4) *Contraband shall be seized and summarily forfeited to the Republic of Palau without regard to the procedures set forth in this chapter;*
- (5) *Any proceeds or other property acquired, maintained, or produced by means of or as a result of the commission of the covered offense;*
- (6) *Any property derived from any proceeds that were obtained directly or indirectly from the commission of a covered offense;*
- (7) *Any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise that has been established, participated in, operated, controlled, or conducted in order to commit a covered offense;*
- (8) *All books, records, bank statements, accounting records, microfilms, tapes, computer data, or other data which are used, intended for use, or which facilitated or assisted in the commission of a covered offense, or which document the use of the proceeds of a covered offense.*

(b) Except that:

- (1) Real property, or an interest therein, may be forfeited under the provisions of this chapter only in cases in which the covered offense is chargeable as a felony offense under the laws of the Republic of Palau;*
- (2) No property shall be forfeited under this chapter to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge and consent of that owner;*
- (3) No conveyance used by any person as a common carrier in the transaction of a business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;*
- (4) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent; and*
- (5) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission.*

(c) A person who knowingly violates a seizure for forfeiture order by conveying, disposing of or otherwise dealing with property that is subject to the order commits a Class C felony and may be fined a maximum fine of twenty thousand dollars (\$20,000).

(d) Where a seizure for forfeiture order is entered against property and the property is disposed of, or otherwise dealt with, in violation of the order, the Attorney General may apply to the court for an order that the disposition, conveyance or dealing be set aside unless the disposition, conveyance or dealing was for sufficient consideration or in favor of a person who acted in good faith and without notice.

(e) Where the Attorney General makes an application under subsection (d) in relation to a disposition, conveyance or dealing, the court may set aside the disposition, conveyance or dealing as from the day on which the disposition, conveyance or dealing took place; or as from the day of the order was issued and declare the respective rights of any person who acquired interests in the property on or after the day on which the disposition, conveyance or dealing took place and before the day of the order under this section was issued.

(a) Observations on the implementation of the article

Rights of bona third parties during confiscation proceedings are protected by virtue of exemptions to property that maybe confiscated as provided in 17 PNC section 705.

(c) Challenges, where applicable

Palau has limited capacity, both technological and personnel wise, as well as limited resources.

(d) Technical assistance needs

Palau could benefit from on-site assistance and training.

Article 56. Special cooperation

Article 56

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Section 3335 of the *Penal Code* provides that the Financial Intelligence Unit may disclose any report or information to a foreign government agency or institution, or an international organization, that performs similar functions and is subject to similar secrecy obligations as the FIU.

Penal Code of the Republic of Palau

§ 3335. *Disclosure.*

(a) *The Financial Intelligence Unit may disclose any report or information to a foreign government agency or institution, or an international organization, that performs similar functions and is subject to similar secrecy obligations as the Financial Intelligence Unit:*

(1) *on such terms and conditions as are set out in an agreement or arrangement between the Financial Intelligence Unit and the foreign government institution or agency, or international organization, regarding the exchange of such information; or*

(2) *where such an agreement or arrangement has not been entered into, on such terms and conditions as may be agreed upon by the Financial Intelligence Unit and the foreign institution, agency or organization at the time of disclosure.*

(b) *The Financial Intelligence Unit, with the approval of the Governing Board of the Financial Institutions Commission, may enter into a formal agreement or arrangement, in writing, with a foreign government institution or agency, or international organization, with powers and duties similar to the Financial Intelligence Unit regarding the exchange of information between the Financial Intelligence Unit and that institution, agency or organization.*

(c) *Agreements or arrangements entered into under subsection (a) or the terms and conditions under subsection (b) shall include a stipulation that:*

(1) *any information provided under this Section shall be used by the foreign institution, agency or organization only for the purpose of combating money laundering, financing of terrorism or any other felony. Any other use shall require consent of the Palauan authority providing the information; and*

(2) *any information provided under this Section may not be further disclosed or disseminated by the foreign institution, agency or organization to other authorities in the receiving State or elsewhere without the express consent of the Financial Intelligence Unit.*

(d) *A decision by the director of the Financial Intelligence Unit to analyze a matter or disseminate information under 17 PNC section 3334 is not subject to review except by the Governing Board of the Financial Institutions Commission.*

(e) *Any person who has duties for or within the Financial Intelligence Unit is required to keep confidential any information obtained or matter disclosed to him or her within the scope of these duties, even after the cessation of those duties, except as otherwise provided by this Law or any regulation issued in execution thereof, or as ordered by the court. Such persons may only use such information for purposes provided for and in accordance with this Law.*

(f) *Any person or past employee of the Financial Intelligence Unit or other person who has duties for or within the Financial Intelligence Unit who willfully discloses information in contravention of subsection (e) shall be guilty of a Class C felony or a maximum fine of ten thousand dollars (\$10,000), or both.*

(b) Observations on the implementation of the article

As explained elsewhere in the report, MPLCA allows FIU to disclose any report or information, including information on proceeds of corruption, to foreign counterparts with or without conditions. Similarly, the

Office of the Special Prosecutor may share information with or without conditions. Information can be shared spontaneously and informally, but in cases regarding specific targeted information, official requests are made. While Palau is not a member of Interpol or of any asset recovery practitioner networks, the authorities may exchange information using the Asset Recovery Interagency Network Asia Pacific (ARIN AP) and Interpol through the US authorities.

It was therefore recommended that Palau endeavour to join INTERPOL and relevant networks of asset recovery practitioners to enhance its ability to proactively share information on proceeds of corruption.

Article 57. Return and disposal of assets

Paragraph 1 of article 57

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

Section 1322 of Title 18 PNC provides for sharing confiscated property with foreign states. 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.

[Title 18 PNC Chapter 13](#)

§ 1322. 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 Republic as a result of action taken in the Republic.

(b) Observations on the implementation of the article

All confiscated property shall be placed in the Forfeited Property Fund within the National Treasury and transferred to the Attorney General. The final disposition of such property will be applied by the Attorney General in accordance with the requirements of 17 PNC section 717 or as authorized by any other law.

MACMA expressly provides for sharing of confiscated property with foreign States. If property was realized in Palau as a result of action taken by the Attorney General upon request from a foreign State, the Attorney General may enter into an arrangement with that State for reciprocal sharing of part of such property (18 PNC section 1322). However, this provision has not been tested yet in practice and no policy or guidance has been developed to clarify how the Attorney General would exercise this discretion with respect to the specific obligations described under article 57(3) of the Convention.

It was therefore recommended that Palau adopt measures for the return and disposal of confiscated assets according to article 57, paragraphs 1 to 3 of the Convention, taking into account the rights of bona fide third parties (art. 57, paras. 1 to 3); and ensure that confiscated property is returned to the requesting State party in accordance with article 57, paragraph 3 of the Convention, including in cases in which MACMA would allow otherwise (art. 57, paras. 3 and 5).

Paragraph 2 of article 57

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Section 1322 of *Title 18 PNC Chapter 13* provides for sharing confiscated property with foreign states. 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.

The definition of “property” in section 1302 carves out any interest held by a legitimate bona fide purchaser or owner of property, real or otherwise, without notice of any illegal interest.

Title 18 PNC Chapter 13

§ 1302. Definitions.

Unless the subject or context otherwise requires, in this chapter:

(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 bona fide purchaser or owner of property, real or otherwise, without notice of any illegal interest, in such property located in the Republic;

§ 1322. 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 Republic as a result of action taken in the Republic.

(b) Observations on the implementation of the article

Please refer to the observation and recommendation under paragraph 1 of article 57 above.

Subparagraph 3 (a) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Section 1322 of *Title 18 PNC Chapter 13* provides for sharing confiscated property with foreign states. 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.

There is no legislative basis enabling the waiving of the requirement of a final judgement in the requesting State Party.

Title 18 PNC Chapter 13

§ 1322. 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 Republic as a result of action taken in the Republic.

(b) Observations on the implementation of the article

Please refer to the observation and recommendation under paragraph 1 of article 57 above.

Subparagraph 3 (b) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(a) Summary of information relevant to reviewing the implementation of the article

There is no legislative basis enabling the waiving of the requirement of a final judgement in the requesting State Party.

(b) Observations on the implementation of the article

Please refer to the observation and recommendation under paragraph 1 of article 57 above.

Subparagraph 3 (c) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

(a) Summary of information relevant to reviewing the implementation of the article

Section 1322 of *Title 18 PNC Chapter 13* provides for sharing confiscated property with foreign states. 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.

Provisions in the Penal Code provide for restitution. There are also provisions in the Code of Ethics and the Statutory Framework for National Government Procurement.

There is no legislative basis enabling the waiving of the requirement of a final judgement in the requesting State Party.

[Title 18 PNC Chapter 13](#)

§ 1322. *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 Republic as a result of action taken in the Republic.

[Title 33 PNC Chapter 6](#)

§ 611. *Penalties.*

(a) Criminal penalties. Any person who knowingly or willfully violates any provision of this chapter is guilty of a misdemeanor. In addition to other penalties provided by law, a fine of up to ten thousand dollars

(\$10,000) shall be imposed for each violation. For violations of the reporting requirements, a fine of up to three (3) times the amount the person failed to report properly may be imposed for conviction of each violation. Prosecution under this subsection must be commenced within four (4) years after the date on which the violation occurred, or in the case of a public official, four (4) years after the public official leaves government service. Prosecution under this section may be undertaken by the Attorney General or Special Prosecutor.

(b) Civil penalties. Any person who intentionally or negligently violates any provision of this chapter shall be liable in a civil action brought by the Commission, Attorney General, the Special Prosecutor or a citizen of the Republic for an amount not more than ten thousand dollars (\$10,000) or, in the case of a violation of the reporting provisions of this chapter, an amount not more than the amount or value not properly reported or ten thousand dollars (\$10,000), whichever is greater. If a judgment is entered against the defendant in an action brought by a citizen of the Republic, the plaintiff shall receive fifty percent (50%) of the amount recovered, and shall be entitled to recover from the defendant his costs of litigation, including reasonable attorneys' fees. Before a citizen may bring an action pursuant to this section, the citizen must submit a written request to the Commission, Attorney General and Special Prosecutor asking that they bring a civil action and a written statement setting [forth] the specific facts upon which the citizen bases his or her allegation. If the Commission, Attorney General and Special Prosecutor fail to bring a civil action within sixty (60) days after receipt of the written request, or bring an action that is later dismissed without prejudice to the filing of another action, the citizen may thereafter bring a civil action pursuant to this section. An action under this subsection must be commenced within four (4) years after the date on which the violation occurred.

(c) Any public official or candidate who fails to timely file any statement required by this chapter shall pay to the Commission a penalty of fifty dollars (\$50) per day for each day that the disclosure is delinquent. All funds received by the Commission shall be deposited in the national treasury.

(d) If two or more persons are responsible for any violation, they shall be jointly and severally liable.

Title 40 PNC Chapter 6

§ 662. Recovery of value transferred or received in breach of ethical standards.

(a) The value of anything transferred or received in breach of the ethical standards of this article or regulations promulgated hereunder by an employee or non-employee may be recovered from either the employee and non-employee by the government. Upon showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the government and such amount will be recoverable hereunder from the recipient. In addition said amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

(b) Any citizen of the Republic shall have standing to bring his own cause of action to enforce the provisions of sections 655 through 660 of this chapter. Any citizen who prevails in a suit brought pursuant to this subsection shall be entitled to recover reasonable attorney's fees and court costs associated with the prosecution of such action, including appeals proceedings, as part of the damages awarded.

Penal Code of the Republic of Palau

§ 657. Victim restitution.

(a) As used in this section, "victim" includes any of the following:

- (1) The direct victim of a crime including a business entity, trust, or governmental entity;
- (2) If the victim dies as a result of the crime, a surviving relative of the victim as defined in 25 PNC Chapter 2; or

(3) A governmental entity that has reimbursed the victim for losses arising as a result of the crime.

(b) The court shall order the defendant to make restitution for reasonable and verified losses suffered by the victim or victims as a result of the defendant's offense when requested by the victim. If the court orders payment of a fine in addition to restitution or a compensation fee, or both, the payment of restitution and compensation fee shall have priority over the payment of the fine, and payment of restitution shall have priority over payment of a compensation fee.

(c) In ordering restitution, the court shall not consider the defendant's financial ability to make restitution in determining the amount of restitution to order. The court, however, shall consider the defendant's financial ability to make restitution for the purpose of establishing the time and manner of payment. The

court shall specify the time and manner in which restitution is to be paid. Restitution shall be a dollar amount that is sufficient to reimburse any victim fully for losses, including but not limited to:

- (1) Full value of stolen or damaged property, as determined by replacement costs of like property, or the actual or estimated cost of repair, if repair is possible;
- (2) Medical expenses; and
- (3) Funeral and burial expenses incurred as a result of the crime.
- (d) The restitution ordered shall not affect the right of a victim to recover in any manner provided by law; provided that any amount of restitution actually recovered by the victim under this section shall be deducted from any award.

(b) Observations on the implementation of the article

Please refer to the observation and recommendation under paragraph 1 of article 57 above.

Paragraph 4 of article 57

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

(a) Summary of information relevant to reviewing the implementation of the article

Any request for mutual legal assistance must relate to the commission of a serious offense and in all cases, the requesting state is required to provide written assurance that it will cover all costs associated with the request.¹³ Section 1311 of *Title 18 PNC Chapter 13* provides that the Attorney General may 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.

Title 18 PNC Chapter 13

§ 1311. 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 a 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.

¹³ International Monetary Fund, Palau: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism, 2009, p 139.

(b) Observations on the implementation of the article

Section 1311 of Title 18 PNC requires a requesting State party to make sufficient written assurance that it will cover “all costs associated with the request”. However, the provision under review only allows the requested States to deduct “reasonable expenses” that were incurred in “investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property.” **Therefore, it was recommended that Palau ensure that only reasonable costs are deducted when returning or disposing of property.**

Paragraph 5 of article 57

5. *Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.*

(a) Summary of information relevant to reviewing the implementation of the article

No response.

(b) Observations on the implementation of the article

During the country visit, the authorities confirmed that, if necessary, Palau will consider entering into agreements or arrangements with other States, on a case-by-case basis, for the final disposal of confiscated property.

Please refer to the observation and recommendation under paragraph 1 of article 57 above.

Article 58. Financial intelligence unit

Article 58

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

(a) Summary of information relevant to reviewing the implementation of the article

The Financial Intelligence Unit (FIU) was established in 2002, pursuant to the *Financial Institutions Act 2001* and the *Money Laundering and Proceeds of Crime Act 2001*. These laws also triggered the establishment of the Financial Institutions Commission (FIC) to supervise banks and the FIU to investigate suspicious and cash (over a threshold of USD10,000) transactions. The FIU took on more of an investigative role in 2010. It has since assisted in bribery, money-laundering and the confiscation of proceeds of crime cases. It has the capacity to screen possible corruption-related transactions, as well as those relating to terrorism.

The *Penal Code* (Title 17 PNC) contains provisions pertaining to the FIU. Section 3334 includes as a duty of the FIU, to cooperate, share information and enter into agreements or arrangements with foreign government institution or agency, or any international organization, in accordance with section 3335.

[Penal Code of the Republic of Palau](#)

The Financial Intelligence Unit

§ 3331. *Financial Intelligence Unit.*

§ 3332. *Director.*

§ 3333. *Candidates for director.*

§ 3334. *Powers, duties and obligations of Financial Intelligence Unit*

§ 3335. *Disclosure.*

§ 3336. *Budget.*

§ 3331. *Financial Intelligence Unit.*

(a) *The Financial Intelligence Unit established by the Money Laundering and Proceeds of Crime Act 2001 shall continue to be established as if established by this Act.*

(b) *The Financial Intelligence Unit shall be an independent agency responsible for receiving, analyzing, investigating and disseminating information concerning suspected proceeds of crime and terrorist property, as provided for under this Law.*

Source RPPL 9-21 § 5 [Chapter 33 § 3330], modified.

§ 3332. *Director.*

The Director of the Financial Intelligence Unit shall be appointed by the Governing Board of the Financial Institutions Commission on such terms and conditions as the Board may determine in consultation with the Money Laundering Working Group (MLWG).

(a) *The Director may exercise all of the functions, powers and duties of the Financial Intelligence Unit under this Act, and any regulations promulgated under the authority of the Money Laundering and Proceeds of Crime Act of 2001, such regulations shall remain in full force and effect as if promulgated under this Act.*

(b) *The Director shall report to the Governing Board of the Financial Institutions Commission on the exercise of his or her powers and the performance of his or her duties under this Chapter.*

(c) *The Director may appoint such other officers and employees of the Financial Intelligence Unit as are necessary for the efficient exercise of the duties, functions and powers of the Financial Intelligence Unit.*

(d) *The Director may authorize any person subject to any terms and conditions that the Director may specify, to carry out any power, duty, or function conferred on the Director under this chapter.*

(e) *The Director shall ensure that an officer, employee or agent of the Financial Intelligence Unit received training or will receive training in the investigation of financial crimes, intelligence analysis and financial auditing as are necessary for the efficient exercise of the duties, functions and powers of the Financial Intelligence Unit.*

(f) *To assist with the creation, organization, training and operation of the Financial Intelligence Unit, the Director of the Financial Intelligence Unit may obtain technical assistance from foreign countries or international organizations, including but not limited to, the temporary employment of foreign law enforcement and intelligence consultants.*

(g) *The Director shall ensure that an officer, employee or consultant of the Financial Intelligence Unit, or any other person acting on behalf of the Financial Intelligence Unit, shall take an oath of confidentiality and shall receive credentials that identify that person has been authorized to act on behalf of the Financial Intelligence Unit.*

(h) *The Director may generally or particularly, delegate to any employee or agent of the Financial Intelligence Unit, as he or she thinks fit, all or any of the powers in the same manner and with the same effect as if they had been conferred to him or her directly by this chapter and not by delegation.*

(1) *Subject to any general or specific directions given or conditions attached by the Director, the employee or agent to whom those powers are delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on him or her directly by this chapter and not by delegation.*

(2) *Until a delegation is revoked in writing, it continues in force according to its tenor and in the event of the Director ceasing to hold office, the delegation continues to have effect as if made by the person for the time being holding office as Director.*

(3) *Every delegation made under this Section is revocable at will and no delegation prevents the exercise of any power by the Director.*

(i) *Any officer, employee or agent of the Financial Intelligence Unit may at any time be removed or suspended from office by the Director for disability affecting the performance of duty, neglect of duty, incompetence or misconduct proven to the satisfaction of the Director.*

Source RPPL 9-21 § 5 [Chapter 33 § 3331], modified.

§ 3333. *Candidates for director.*

(a) *The Director must not be –*

(1) *a member of Congress;*

(2) *a member of a local authority, except for the Bureau of Public Safety;*

(3) a director, officer or employee of, or holds any shares in any financial institution or designated non-financial business and professions, or

(4) hold any other office or carry out any other professional activity without prior approval from the Governing Board of the Financial Institutions Commission.

(b) The Director may at any time be removed or suspended from office by the Governing Board of the Financial Institutions Commission for disability affecting the performance of duty, neglect of duty, incompetence or misconduct proven to the satisfaction of the Board.

Source RPPL 9-21 § 5 [Chapter 33 § 3332], modified.

§ 3334. Powers, duties and obligations of Financial Intelligence Unit.

To properly implement its functions under this Law, the Financial Intelligence Unit shall have the following powers and duties:

(a) to receive information and reports in accordance with its functions and, in relation to any information or report it has received, to make inquiries with or obtain from any financial institution any additional information the Financial Intelligence Unit deems necessary to carry out its functions, regardless of whether the requested person has made a report. The information requested shall be provided within the time limits and the form

specified by the Financial Intelligence Unit;

(b) to analyze and assess any report or information received in accordance with its functions;

(c) for transactions or attempted transactions that occurred prior to the entry into force of this Act, to require financial institutions and designated non-financial business and professions to disclose records in the financial institution's or the designated nonfinancial business and profession's control, that pertain to the transaction or attempted transaction for a particular account for or by a particular person, and for a particular time period, if such disclosure would have been required to be reported under the provisions of this Act if it had been in effect during the particular time period in question;

(d) to enter the premises of any financial institution or designated non-financial business and profession during ordinary business hours to inspect any records kept pursuant to this Act and that are necessary to the fulfillment of the functions of the Financial Intelligence Unit, and to ask any questions and make enquiries relating to and make notes and take copies of such records;

(e) in relation to any report or information it has received in accordance with its functions, to obtain or collect any information it deems necessary to carry out its function, whether or not publicly available, including commercially available databases or information and information stored in databases maintained by other government agencies that may hold relevant information such as Bureau of Revenue, Customs and Taxation, Bureau of Public Safety, Office of the Attorney General or other competent supervisory authorities;

(f) to act on behalf of the Republic of Palau in seeking information from any foreign government agency, foreign law enforcement agency, foreign supervisory authority and foreign auditing authority for purposes of this Law;

(g) to refer any report or information it has received in accordance with its functions to the appropriate law enforcement agency in the Republic of Palau if, on the basis of its analysis and assessment, the Financial Intelligence Unit has reasonable grounds to suspect that a transaction or attempted transaction involves proceeds of crime, or is related to or intended for financing of terrorism, or is terrorist property;

(h) to apprise the competent supervisory authority whenever it appears that a financial institution or designated non-financial business and profession, or any of its respective directors, officers or employees, is not complying or has not complied with the obligations under this Law or any regulation issued in execution of this Law;

(i) to destroy a suspicious transaction report received or collected on the expiry of six years after the date of receipt of the report if there has been no further activity or information relating to the report or the person named in the report, or six years from the date of the last activity relating to the person or report, whichever date is later;

(j) to instruct any financial institution or designated non-financial business and profession to take such steps as may be appropriate in relation to any information or report received by the Financial Intelligence Unit to enforce compliance with this Law or to facilitate any investigation anticipated by the Financial Intelligence Unit or a law enforcement agency;

(k) based on reasonable grounds to suspect that a transaction or attempted transaction involves proceeds of crime, or is related to or intended for financing of terrorism, or is terrorist property, to direct in writing

that the financial institution or designated nonfinancial business and profession involved in the transaction either proceed or refrain from proceeding with the transaction or attempted transaction, for a period to be determined by the Financial Intelligence Unit.

(1) Any direction must not exceed five (5) working days if the direction is in writing.

(2) Any direction given orally must not exceed twenty four (24) hours and must be confirmed in writing within twenty four (24) hours of the oral direction.

(3) Before the expiration of five days of giving the direction, the Financial Intelligence Unit may apply to the Supreme Court for an order to extend the period of the direction.

(l) to issue guidelines to financial institutions and designated non-financial business and professions on the manner of transaction reporting under [Subchapter III] of this chapter, including specification of reporting forms, content of transaction reports and the procedures that should be followed when reporting transactions;

(m) to provide feedback to the financial institution, designated non-financial business or profession and any relevant government department, office, agency or institution regarding outcomes relating to the reports or information provided by it under the provisions of this Law;

(n) to provide training programs for financial institutions and designated non-financial business and professions in relation to reporting obligations, and the identification of suspicious transactions;

(o) to conduct research into and compile and provide information and statistics on trends and developments in the area of money laundering, the financing of terrorism, and ways to detect, prevent and deter such activities;

(p) to educate the public and create awareness on matters relating to money laundering and the financing of terrorism;

(q) to cooperate and share information with other domestic competent authorities;

(r) to assist competent authorities to investigate or prosecute any offense;

(s) to provide information to and assist competent authorities to apply seizing and confiscation measures pursuant to 17 PNC Chapter 7; or to freeze property under 17 PNC Chapter 33, [Subchapter V];

(t) to advise financial institutions and designated non-financial business and professions of concerns about weaknesses in the anti-money laundering and countering financing of terrorism (AML/CFT) systems of other countries;

(u) to cooperate, share information and enter into agreements or arrangements with foreign government institution or agency, or any international organization, in accordance with 17 PNC section 3335; and

(v) to report in writing to the Governing Board of the Financial Institutions Commission of the Republic of Palau prior to the end of each fiscal year on the activities of the Financial Intelligence Unit during the previous year and the expected activities of the Financial Intelligence Unit during the subsequent year, without disclosing confidential information or information that may jeopardize an ongoing investigation or prosecution.

(w) to promulgate any rules and regulations as may be necessary to give effect to the intent of Chapter 33 of this Title of the Palau National Code; in addition, any regulations previously promulgated by the Financial Intelligence Unit under the authority of the Money Laundering and Proceeds of Crime Act of 2001 shall remain in full force and

effect as if promulgated under the authority of this Act.

Source RPPL 9-21 § 5 [Chapter 33 § 3333], modified.

Notes Section referenced in this section has been renumbered to conform with the Code numbering format.

In subsection (l) the bracketed [Subchapter III] replaced the word “Part III” and in subsection (s) the bracketed [Subchapter V] replaced the word “Part V” in the original legislation per Code Commission.

§ 3335. Disclosure.

(a) The Financial Intelligence Unit may disclose any report or information to a foreign government agency or institution, or an international organization, that performs similar functions and is subject to similar secrecy obligations as the Financial Intelligence Unit:

(1) on such terms and conditions as are set out in an agreement or arrangement between the Financial Intelligence Unit and the foreign government institution or agency, or international organization, regarding the exchange of such information; or

(2) where such an agreement or arrangement has not been entered into, on such terms and conditions as may be agreed upon by the Financial Intelligence Unit and the foreign institution, agency or organization at the time of disclosure.

(b) The Financial Intelligence Unit, with the approval of the Governing Board of the Financial Institutions Commission, may enter into a formal agreement or arrangement, in writing, with a foreign government institution or agency, or international organization, with powers and duties similar to the Financial Intelligence Unit regarding the exchange of information between the Financial Intelligence Unit and that institution, agency or organization.

(c) Agreements or arrangements entered into under subsection (a) or the terms and conditions under subsection (b) shall include a stipulation that:

(1) any information provided under this Section shall be used by the foreign institution, agency or organization only for the purpose of combating money laundering, financing of terrorism or any other felony. Any other use shall require consent of the Palauan authority providing the information; and

(2) any information provided under this Section may not be further disclosed or disseminated by the foreign institution, agency or organization to other authorities in the receiving State or elsewhere without the express consent of the Financial Intelligence Unit.

(d) A decision by the director of the Financial Intelligence Unit to analyze a matter or disseminate information under 17 PNC section 3334 is not subject to review except by the Governing Board of the Financial Institutions Commission.

(e) Any person who has duties for or within the Financial Intelligence Unit is required to keep confidential any information obtained or matter disclosed to him or her within the scope of these duties, even after the cessation of those duties, except as otherwise provided by this Law or any regulation issued in execution thereof, or as ordered by the court. Such persons may only use such information for purposes provided for and in accordance with this Law.

(f) Any person or past employee of the Financial Intelligence Unit or other person who has duties for or within the Financial Intelligence Unit who willfully discloses information in contravention of subsection (e) shall be guilty of a Class C felony or a maximum fine of ten thousand dollars (\$10,000), or both.

In 2016, Palau created the FCIU, a taskforce, which is mandated to meet on a monthly basis and in and includes a number of select investigators from various agencies in the government including the FIU, Bureau of Public Safety, the OAG, the Customs Office, Special Prosecutor's Office, NEA, Revenue and Taxation, and the Postal Inspector. The FCIU meets to review and assign STRs received from the FIU to one or more members of the investigative core and then formulates an investigative plan and reviews the progress of the assigned investigator(s). Establishment The FIU is a member of the Pacific Association of FIUs.

(b) Observations on the implementation of the article

MLPCA established FIU as an independent agency responsible for receiving, analysing, investigating and disseminating information concerning suspected proceeds of crime and terrorist property. The Act sets out FIU's powers, duties and obligations in more detail and provides for the power to cooperate and share information with domestic and foreign competent authorities.

During the country visit, the authorities reported that sufficient measures have been taken to strengthen the independence and human and financial resources of FIU given the size and context of Palau.

The provision has been implemented.

Article 59. Bilateral and multilateral agreements and arrangements

Article 59

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Republic of Palau indicated that it has entered into the following bilateral or multilateral agreements on direct cooperation with law enforcement agencies of United States, Republic of Marshall Islands, and Taiwan:

1. Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 of the Compact of Free Association;
2. Agreement Concerning Special Programs Related to the Entry into Force of the Compact of Free Association between the Government of the United States and the Government of the Republic of Palau;
3. Agreement Between the Government of the United States of America and the Government of the Republic of Palau concerning Operational Cooperation to Suppress Illicit Transnational Maritime Activity;
4. Treaty Between the Federated States of Micronesia, and the Republic of the Marshall Islands, and the Republic of Palau on Extradition, Mutual Assistance in Law Enforcement Matters, and Penal Sanctions;
5. Treaty of Extradition between the Government of the Republic of Palau and the Government of the Republic of China (Taiwan).

(b) Observations on the implementation of the article

Palau has entered into several bilateral and multilateral agreements on mutual legal assistance and direct cooperation with law enforcement agencies of foreign jurisdictions to facilitate international cooperation in asset recovery. It is however noted that the listed bilateral agreements have been concluded with States from Asia and Pacific region only. **In light of this, it was recommended that Palau consider concluding more bilateral and multilateral agreements on asset recovery, including with countries from outside the region.**