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State of implementation of the United Nations
Convention against Corruption

Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Palau

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


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 places 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, secs. 658 and 1804, of the Code). 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, 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.

The Money Laundering and Proceeds of Crime Act established the Financial Intelligence Unit as an independent agency responsible for receiving, analysing,

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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.
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).