

Palau: Money Laundering and Proceeds of Crime Act of 2001

SIXTH OLBIL ERA KELULAU RPPL No.

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MONEY LAUNDERING AND PROCEEDS OF CRIME ACT, 2001

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MONEY LAUNDERING AND PROCEEDS OF CRIME ACT

SUBCHAPTER 1. GENERAL PROVISIONS

Section 1. Short title.

This Act shall be known and may be cited as the Money Laundering and Proceeds of Crime Act of 2001.

Section 2. Purpose.

The Republic of Palau shall, by the implementation of this Act, facilitate the transparency of transactions of credit and financial institutions as defined herein, for the purposes of the detection and suppression of money laundering offenses as defined herein.

Section 3. Definition of money laundering.

(a) For the purposes of this Act, the following acts either singly or collectively shall constitute the offense of money laundering:

- (1) the conversion or transfer of property for the purpose of concealing or disguising the illegal origin of such property; or
- (2) the concealment or disguise of the illegal nature, source, location, disposition, movement, or ownership of property; or
- (3) the acquisition, possession, or control of property by any person who knows that the property constitutes the proceeds of crime as defined herein.

(b) Knowledge, intent, or purpose is required as an element of the offense of money laundering and may be inferred from objective factual circumstances.

Section 4. Definitions.

In this Act, unless the context otherwise requires:

(a) "account" means any facility or arrangement by which a financial institution or cash dealer does any one or more of the following:

- (1) accepts deposits of currency;
- (2) allows withdrawals of currency or transfers into or out of the account;
- (3) pays checks or payment orders drawn on a financial institution or cash dealer by, or collects checks or payment orders on behalf of, a person;
- (4) supplies a facility or arrangement for a safety deposit box;

(b) "appeal" includes proceedings by way of discharging or setting aside a judgment, and an application for a new trial or for a stay of execution;

(c) "Attorney General" means the Attorney General of the Republic of Palau;

(d) "authorized officer" means a person or class of persons designated by the Minister of Justice as an authorized officer;

(e) "cash dealer" or "over the counter exchange dealer" means:

- (1) a person who carries on a business of an insurer, an insurance intermediary, a securities dealer or a futures broker;
- (2) a person who carries on a business of dealing in bullion, of issuing, selling or redeeming travelers checks, money orders or similar instruments, or of collecting holding and delivering cash as part of a business of providing payroll services;
- (3) an operator of a gambling house, bingo parlor, casino or lottery, including but not limited to all forms of internet gambling; or
- (4) a trustee, or manager of a unit trust;

(f) "confiscation" means the permanent deprivation of property by final order of the Supreme Court after all appeals are exhausted;

(g) "criminal organization" means any structured association having the aim of committing crimes;

(h) "currency" means any coin or paper that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;

(i) "document" means any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device, and any record of information, and includes:

- (1) anything on which there is writing;
- (2) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;
- (3) anything from which sounds, images or writings can be produced, with or without the aid of anything else; and
- (4) a map, plan, drawing, photograph or similar thing;

(j) "financial institution" or "credit institution" means any bank, savings and loan institution, credit union, securities broker or dealer, or an entity or person whose primary business activity includes:

- (1) acceptance of deposits and other repayable funds from the public;
- (2) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
- (3) financial leasing;
- (4) money transmission services;
- (5) issuing and administering means of payment (such as credit cards, travelers checks and bankers drafts);
- (6) guarantees and commitments;
- (7) trading for their own account or for account of customers in money market instruments (such as checks, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities;

- (8) underwriting share issues and participation in such issues;
- (9) money-brokering;
- (10) portfolio management and advice;
- (11) safekeeping and administration of securities;
- (12) credit reference services;
- (13) safe custody services;

(k) "Financial Intelligence Unit" ("FIU") means the governmental agency created pursuant to section 15;

(l) "instrumentality" means any property used or intended to be used in any manner to commit one or more criminal offenses;

(m) "interest", in relation to property, means:

- (1) a legal or equitable estate or interest in the property;
- (2) a right, power or privilege in connection with the property;

(n) "money laundering offense" means knowingly and intentionally engaging in activities covered by section 3 of this Act;

(o) "offender" means any person legally culpable for a criminal offense under the laws of the Republic of Palau as the principal, accessory, conspirator or co-conspirator, or a person aiding and abetting the principal as such terms are defined pursuant to 17 PNC;

(p) "person" means any natural or legal person;

(q) "proceeding or proceedings" means any procedure conducted by or under the supervision of a judge or judicial officer however described in relation to any alleged or proven offense, or property derived from such offense, and includes an inquiry, investigation, or preliminary or final determination of facts;

(r) "proceeds of crime" means any property or economic advantage derived from a crime;

(s) "property" means assets of every kind, whether movable or immovable, tangible or intangible, and legal documents or instruments evidencing an interest in such assets;

(t) "Supreme Court" means the Supreme Court of the Republic of Palau, and all its divisions;

(u) "unit trust" means any arrangement made for the purpose or having the effect of providing, for a person having funds available for investment, facilities for the participation by the person as a beneficiary under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property pursuant to the trust.

SUBCHAPTER II. PREVENTION OF MONEY LAUNDERING

Section 5. Report on the use of cash and bearer securities.

Credit or financial institutions shall keep regular reports of all transactions made in cash or bearer securities in excess of US \$10,000.00, or its equivalent in foreign cash or bearer securities.

Section 6. Requirement to effect domestic or international transfers of funds via credit or financial institutions.

Any transfer to or from foreign countries of moneys or securities involving a sum greater than US \$10,000.00 or its equivalent shall be made by or through a credit or financial institution licensed under the laws of the Republic of Palau.

Section 7. Financial institutions and cash dealers to verify customers' identity.

(a) Credit and financial institutions shall be required to verify their customers' identity and address before opening ordinary accounts or passbooks, taking stocks, bond, or other securities into safekeeping, granting safe-deposit facilities, managing assets, or effecting or receiving payments on behalf of either natural or legal persons.

(b) A natural person's identity and address shall be evidenced by the presentation of either an original official identification document that is unexpired and bears a photograph or a reasonable alternative. A copy thereof shall be taken.

(c) A legal person shall be identified by the production of its articles of incorporation or charter or its equivalent or any other document establishing that it has been lawfully registered and that it is actually in existence at the time of the identification. A copy thereof shall be taken.

(d) Natural or legal persons authorized to enter into transactions at credit or financial institutions on behalf of third parties shall produce the documents referred to in subsections (b) and (c) above for themselves and the beneficial owners.

SUBCHAPTER III. TRANSPARENCY IN FINANCIAL TRANSACTIONS

Section 8. Identification of casual customers of Financial Institutions.

(a) Casual customers of financial institutions shall be identified, in the manner specified in section 7 in the case of any transaction involving a sum greater than the equivalent of US \$10,000.00. If the amount of the transaction is unknown at the time of the operation, the customer shall be identified as soon as the threshold amount of US \$10,000.00 becomes known or is reached by the transaction.

(b) Identification of casual customers pursuant to this section shall also be carried out in cases where the customer's separate transactions are conducted in a manner that reasonably appears to have an unlawful criminal purpose; in that case, the credit or financial institution shall submit a confidential report as described in section 10 to the FIU and the Office of the Attorney General pursuant to section 19.

Section 9. Identification of beneficial owners.

If, in the opinion of the credit or financial institution, it is uncertain whether a customer is acting on his or her own behalf, the credit or financial institution shall seek information by any legal and reasonable means to ascertain the true identity of the principal or party on whose behalf the customer is acting. If good faith attempts by credit and financial institutions to verify the identity of any beneficial owner and the true

identity of the beneficial owner have doubtful results, the banking relationship shall be terminated, without prejudice to the credit or financial institution.

Section 10. Special monitoring of certain transactions.

Where a transaction involves a sum greater than the equivalent of US \$10,000.00 and is conducted in a manner that appears to have an unlawful purpose, the credit or financial institution shall provide information as to the origin and destination of the money, the purpose of the transaction, and the identity of the transacting parties to the FIU. The credit or financial institution shall submit to the FIU and Office of the Attorney General, pursuant to section 19, a confidential written report containing all relevant information on the methods of the transaction and the identity of the principal and, where applicable, of the transacting parties. The report shall be maintained as specified in section 11.

Section 11. Record-keeping by credit and financial institutions.

Credit and financial institutions shall maintain and hold at the disposal of the authorities pursuant to section 12:

- (a) records of customer identification for five years after the account has been closed or the relations with the customer have ended; and
- (b) records of transactions conducted by customers and the reports provided for in section 10 for five years following execution of the transaction.

Section 12. Communication of information.

(a) The confidential information and records referred to in sections 7 through 11 shall be delivered to the FIU and the Office of the Attorney General upon the application of the Office of the Attorney General to the Supreme Court, Trial Division, for an order allowing the FIU and the Office of the Attorney General to examine the contents of confidential reports and records of a credit or financial institution based upon a finding of probable cause. The Court's order shall further specify with particularity the documents to be produced or delivered by the reporting party. Such application shall be made pursuant to an investigation by the FIU for the detection and suppression of money laundering or predicate offenses.

(b) Upon an ex parte showing of probable cause, the Supreme Court shall order the credit or financial institution or over the counter cash exchange dealer to produce and deliver the above described confidential reports and records. When exigent circumstances require it, the Office of the Attorney General may make the aforesaid application for an order via telephonic exchange with any sitting Justice of the Supreme Court at any time. The Office of the Attorney General's written affirmation of the Court's oral order for production shall be transmitted to the reporting party immediately, either by facsimile or by any other written means.

(c) Notwithstanding the foregoing, the Office of the Attorney General shall follow up the aforesaid request with a sworn written application to the Court for the order by the close of business on the next business day following receipt by the reporting party of the Court's oral order directing the production and delivery of reports and records. Should the Office of the Attorney General fail to submit the written application by the close of business on the business day following the issuance of the Order all the confidential reports and records shall be returned to the credit or financial institution and any copies destroyed immediately by the FIU and the Office of the Attorney General.

(d) Upon receipt of confidential information by the Office of the Attorney General pursuant to this section, the Ministry of Justice, Financial Intelligence Unit ("FIU"), the Office of the Attorney General, and all related employees and agencies shall be prohibited from disclosing or making known the existence and

content of the information received. Under no circumstances shall persons be required to transmit the above information and reports, nor shall any other individual having knowledge thereof be required to communicate such information or reports to any natural or legal person other than those specified in subsection (a).

Section 13. Internal anti-money-laundering programs at credit and financial institutions.

Credit and financial institutions shall develop written policies and procedures, to the extent such programs and procedures do not currently exist, for the prevention of money laundering. Such programs shall include the following:

- (a) Centralization of information on the identity of customers, principals, beneficiaries, authorized agents, and beneficial owners, and regarding suspicious transactions;
- (b) Designation of compliance officers, at central management level, in each branch and at each agency or local office;
- (c) On-going training for officials or employees;
- (d) Internal audit arrangements to check compliance with and effectiveness of the measures taken to implement this Act.

Section 14. Over-the-counter exchange dealings.

Natural or legal persons whose sole occupation is that of an over-the-counter exchange dealer shall be required to do the following:

- (a) Before commencing to do business in the Republic of Palau, to submit a declaration of activity to the Minister of Justice for the purpose of obtaining a license to establish and operate an over-the-counter exchange dealer business, as provided for under the applicable laws of Palau, and, in that declaration, to furnish proof of the lawful origin of the capital required to establish the business;
- (b) To verify the identity of their customers, by requiring the presentation, prior to any transaction involving a sum greater than the equivalent of US \$2,500.00 or, in the case of any transaction conducted in conditions of unusual or unjustified complexity, of an official original document of identification of the customer that is unexpired and bears a photograph, a copy of which shall be taken.
- (c) To record, in chronological order, all transactions, their nature and amount, indicating the customer's complete name, such information to be maintained, in a register numbers and signed by the competent administrative officer of the business, and to retain such register for five years after the last transaction is recorded.

SUBCHAPTER IV. DETECTION OF MONEY LAUNDERING

Section 15. Cooperation with anti-money-laundering authorities.

(a) A Financial Intelligence Unit ("FIU") shall be created within the Office of the Attorney General. Other agencies of the government may be assigned to assist the FIU by the President at the request of the Attorney General. The Attorney General, in consultation with the President of the Republic of Palau, may promulgate regulations pertaining to the duties and functions of the FIU pursuant to the Administrative Procedure Act, 6 PNC Chapter 1.

(b) The FIU members shall be required to keep confidential any information obtained within the scope of their duties, even after cessation of those duties with the FIU. Such information may not be used for any purposes other than those provided for by this Act.

(c) The FIU members may not concurrently hold any other public or private employment or hold or pursue any elective office in the Palau National Government any State Government, or engage in other assignments or activities which might affect the independence of their position.

(d) The FIU shall receive the reports transmitted by the persons referred to in sections 10 and 19. The FIU shall analyze the reports on the basis of the information at its disposal and shall gather, in particular from organizations and government ministries and agencies involved in combating organized crime, any additional information that may help to establish the origin of the funds or the nature of the suspect transactions forming the subject of the reports.

(e) The reports required of the persons referred to in section 19 shall be sent to the FIU by any rapid means of confidential communication. The FIU shall confirm in writing receipt of any reports received by the FIU pursuant to section 19.

(f) An annual report shall be submitted by the FIU to the President, the Minister of Justice, and the Olbiil Era Kelulau. The report shall provide an overall analysis and evaluation of the reports received and of money laundering trends.

Section 16. General provisions.

The FIU shall be responsible for receiving, analyzing, and processing reports required pursuant to this Act. All officials, employees, and agents of the national government or any other government shall keep confidential the information thus obtained, which may not be used for any purposes other than those provided for in this Act.

Section 17. Access to information.

The FIU may also obtain from any public authority or from any natural or legal person information and records, specified in section 12, within the scope of investigations conducted following the report of a suspicion of illegal activities as set forth in section 23. The FIU shall, upon request, be granted reasonable access to databases of all public authorities. In all cases, the use of information thus obtained shall be limited to the purposes of this Act.

Section 18. Relationships with foreign financial intelligence units abroad.

(a) The FIU, subject to a reciprocal arrangement with foreign governments, shall exchange information with financial intelligence units of foreign countries responsible for receiving and processing reports of money laundering, provided that such exchanges are governed by confidentiality requirements substantially similar to those set forth in this Act.

(b) Upon receipt of a request for information or transmission from a counterpart foreign financial intelligence unit, the FIU may comply with that request within the scope of the powers set forth in the reciprocal agreement, so long as such compliance is not in conflict with Palau law.

Section 19. Requirement to report suspicious transactions.

(a) Any natural or legal person who, in connection with his, her, or its trade or occupation, carries out or advises on operations involving deposits, exchange operations, investments, conversions, or any other movements of capital, and in particular to credit and financial institutions and financial intermediaries, and any over-the-counter exchange dealer, as defined in section 14, shall be required to report to the FIU transactions referred to in section 10 involving money that reasonably appears to be derived from the perpetration of a crime described in section 3. The persons referred to in this section shall be required to report the transactions carried out even if it was not feasible to defer their execution or if it became clear only after completion of a transaction that it involved a money laundering offense. Any natural or legal person referred to in this subsection shall also be required to report without delay any information that might confirm or invalidate the suspicion of a violation of section 3.

(b) Reports of suspicions of violations of section 3 shall be transmitted to the FIU by a confidential communication in writing. Reports of suspicions of violations communicated by telephone shall be confirmed by a confidential communication in writing within the shortest reasonable time. Such reports shall, as appropriate, indicate:

- (1) the reasons why the transaction was executed; or
- (2) the time limit within which the transaction is to be executed. The FIU shall immediately acknowledge receipt of such reports by confidential written communication to the reporting party.

Section 20. Stop notice on uncompleted transactions.

(a) If the FIU considers it necessary, the Office of the Attorney General shall petition the Supreme Court for an order to stop the execution of a transaction. Upon an ex parte showing of probable cause, the Supreme Court shall order stoppage of the transaction. When exigent circumstances require it, the Office of the Attorney General may make the aforesaid application for an order via telephonic communication with any sitting Justice of the Supreme Court at any time.

(b) Notwithstanding the foregoing, the Office of the Attorney General shall follow up a telephonic request with a sworn written application to the Court within the business day following receipt of the Court's oral order directing the stoppage. The Court's order stopping the transaction shall be transmitted to the reporting party immediately, either by facsimile or by any other written means. The stop notice order shall defer the execution of the transaction for a period not to exceed 72 hours. Should the Office of the Attorney General fail to submit the written application as required herein, after issuance of the Court's stop notice order, the transaction may be completed.

(c) To extend the stoppage of the transaction, the Office of the Attorney General must immediately notify all parties to the transaction by facsimile and simultaneously move the Court for an order allowing an extension of the stoppage for an additional period not to exceed eight (8) days. Upon receipt of the motion, the Court shall order an expedited hearing to be held within the shortest possible time after actual notice of the motion to all parties.

Section 21. Exemption from liability for bona fide reporting of suspicions.

(a) No cause of action, suit, or other judicial proceeding for breach of banking or professional secrecy may be instituted against a person who in good faith has carried out a transaction which later is determined to be a suspect transaction or money laundering offense or has transmitted information or submitted a report pursuant to this Act.

(b) No civil or criminal action may be brought, nor any professional sanction taken, against any person who in good faith transmits information or submits reports pursuant to this Act, even if the investigation or judicial decision do not give rise to a charge for any offense.

(c) No civil or criminal action may be brought against any person by reason of any material or non-material loss or economic or non-economic damage of any kind resulting from the freezing of a transaction or the reporting of suspicious transactions or possible violations or other wrongdoing as contemplated by this Act.

Section 22. Exemption from liability arising out of the execution of transactions.

(a) In cases where a suspect transaction has been carried out and unless the Supreme Court has determined that there is probable cause to believe there was a conspiracy with the perpetrator or perpetrators of the money laundering offense, no criminal proceedings in respect of money laundering may be brought against any person who, in connection with his, her, or its trade or occupation, carried out or gave advice regarding the suspect transaction .

(b) The foregoing exemption of liability shall only apply if a person subject to this Act carries out any transaction at the request of the FIU, the Office of the Attorney General, or the Office of the Minister of Justice, acting pursuant this Act.

Section 23. Special investigative techniques.

In the course of an investigation, the FIU or the Office of the Attorney General may:

- (a) monitor bank accounts;
- (b) access computer systems, networks, and servers;
- (c) place under surveillance or tap telephone lines, facsimile machines, or electronic transmission or communication facilities;
- (d) electronically record acts and behavior or conversations; and
- (e) inspect communications of notarial and private deeds or of bank, financial, and commercial records.

The Supreme Court may also order the seizure of the aforementioned documents. These operations (subsections a-e as set forth in this section) shall be possible only when the aforesaid evidence exists which constitutes probable cause for suspecting that such accounts, telephone lines, computer systems and networks, or documents are or may be used by persons suspected of participating in offenses referred to in section 3. Absent exigent circumstances, these operations (subsections a-e as set forth in this section) shall be permitted only pursuant to a warrant issued by the Supreme Court. All investigations and applications for hearing for the above orders shall be filed under seal and kept confidential unless and until charges constituting crimes in the Republic of Palau are brought against suspected parties. Where appropriate, the Court may order that the charges remain under seal until all related investigations have been completed.

Section 24. Undercover operations and controlled delivery.

No punishment may be imposed on officials competent to investigate the money laundering offenses who, for the sole purpose of obtaining evidence relating to offenses referred to in this Act, perform, in the manner specified herein, acts which might be construed as elements constituting any of the offenses referred to in this act.. The authorization of the Supreme Court shall be obtained prior to any operation as described in sections 12 and 23. A detailed report in the form of a sworn affidavit by the officer supervising the investigation shall be transmitted to the Supreme Court upon application for any further

order to the Court which may include allowing the officials charged with investigating the money laundering offenses to carry out such operations, including the delay of, freezing or seizure of money or any other property, until the investigation has been completed and, if necessary, order specific measures for the safekeeping of such property. However, money, assets, and property shall not be frozen for any period in excess 3 months after seizure or freezing, absent a conviction for the crimes under investigation.

Section 25. Disallowance of bank secrecy.

Banking or professional secrecy may not be invoked as grounds for refusal to provide information referred to in section 11 or required in connection with an investigation which relates to money laundering and is ordered by or carried out pursuant to an order of the Supreme Court.

Section 26. Seizure.

Subject to the requirements of 18 PNC, all members of Palau's law enforcement agencies responsible for the detection and suppression of money laundering offenses shall be empowered to seize property connected with the offense under investigation, as well as any evidentiary items that may make it possible to identify such property.

Section 27. Provisional measures.

The Supreme Court may upon motion of the Office of the Attorney General issue a temporary order, at the expense of the national government, freezing capital and financial transactions relating to property of whatsoever nature that is liable to seizure or confiscation under this Act. The lifting of those measures may be ordered at any time at the request of the Office of the Attorney General or upon motion of the beneficial owner the order of the Supreme Court. However, any capital, property, transactions, money, or other assets seized or confiscated and not adjudicated by the Court to be the fruit of the crime of money laundering may not be seized or confiscated for any period in excess of three (3) months, after a seizure or confiscation, absent a conviction.

Section 28. Money laundering penalties.

Any natural person convicted of violating section 3 as a principal shall be fined not less than US \$5,000.00, nor more than double the amount laundered or attempted to be laundered, whichever is greater, or imprisoned for not more than ten years, or both. Any natural person convicted for being an accessory to a violation of section 3 shall be punished pursuant to 17 PNC 103. Any natural person convicted of attempting to violate section 3 shall be punished pursuant to 17 PNC 104. Any natural person found guilty of aiding and abetting a violation of section 3 shall be punished pursuant to 17 PNC 102. Any natural person found guilty of conspiracy to violate section 3 shall be punished pursuant to 17 PNC 901.

Section 29. Penalties applicable to corporate entities.

Corporate entities, other than the Republic of Palau, on whose behalf or for whose benefit a money laundering offense 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, with prejudice to the conviction of those individuals as perpetrators of the offense or accessories to it. In the case of corporate entities which are convicted of three or more offenses under section 3 within a five-year period, such entities may be:

- (a) permanently or for a maximum of five years banned from directly or indirectly carrying on the business activities in the Republic of Palau for which they are licensed or conducted at the time of the offense;

- (b) ordered to close permanently or for a maximum of five years their premises which were used for the commission of the offense; or
- (c) required to publicize the judgment in the press or by radio or television.

Section 30. Civil penalties.

Any person who fails to comply with sections 5, 6, 7, 8, 9, 11, 13, or 14 shall, upon conviction therefor on the basis of clear and convincing evidence, be subject to a civil penalty not to exceed US \$50,000.00 upon application by the Office of the Attorney General. The rules governing adjudicative proceedings under the Administrative Procedure Act, 6 PNC Chapter 1, shall not apply to this section.

Section 31. Penalties for other offenses.

(a) A penalty of not more than two years' imprisonment or a fine not to exceed US \$10,000.00 shall be imposed on:

- (1) persons and directors or employees of organizations that carry out or advise on operations involving deposits, exchange operations, investments, conversions, or any other movements of capital, and in particular to credit and financial institutions and financial intermediaries, who knowingly disclose, to the owner of the sums or to the principal of the transactions specified in that section, a report which they are required to make or the action taken on it as specified in sections 10, 12, 19, and 24;
- (2) anyone who knowingly destroys or removes registers or records which are maintained pursuant to sections 10, 11, or 14;
- (3) anyone who under a false identity performs or attempts to perform any of the operations specified in sections 5, 6, 7, 8, 9, 10, or 14;
- (4) anyone who, having learned by reason of his or her trade or occupation of an investigation into a case of money laundering, knowingly discloses that fact, by any means, to the person or persons to whom the investigation relates;
- (5) anyone who knowingly communicates deeds or records specified in section 23(e) to the FIU or Office of the Attorney General or to the officials competent to investigate the offenses, knowing such deeds or records to contain material errors or omissions, without informing them of that fact;
- (6) anyone who upon a reasonable suspicion fails to report, pursuant to section 19, in cases where the circumstances of the transaction admit the conclusion that the money was derived from one of the offenses referred to in section 19.

(b) Persons found guilty of any offense or offenses set forth in subsection (a) may also be banned permanently or for a maximum of five years from pursuing the trade or occupation which provided the opportunity for the offense to be committed.

Section 32. Confiscation.

(a) In the event of a conviction for actual or attempted money laundering, an order shall be issued by the Supreme Court for the confiscation of the property forming the subject of the offense, including income and other benefits obtained therefrom, against any person to whom they may belong, if it can be established that the owner was not a bona fide purchaser for value or did not acquire the property in return for the provision of services corresponding to its value or the owner did not acquire the property on any other legitimate grounds.

(b) If the government can establish beyond a reasonable doubt the connection between such evidence and the offense, an order may additionally be issued for the confiscation of the property of the convicted offender to the enrichment obtained by him or her during a period of three years preceding his or her conviction. The confiscation order shall specify the property with particularity and contain the necessary details to identify and locate it.

Section 33. Confiscation of property of criminal organizations.

In the event the Supreme Court has determined beyond a reasonable doubt, property over which a criminal organization has power of disposal, that property shall be confiscated if there is a judicial determination beyond a reasonable doubt of a connection between that property and an offense under section 3.

Section 34. Avoidance of certain legal instruments.

Any instrument, the purpose of which is to fraudulently convey property and keep it from confiscation, shall be voidable upon a determination by the Supreme Court that the instrument has been done for fraudulent purposes.

Section 35. Disposal of confiscated property.

(a) Confiscated property and proceeds under this Act shall accrue and be forfeit to the Republic of Palau, which property and proceeds shall be delivered to the general fund of the Republic after the auction sale of such property. Said confiscated property shall remain encumbered, up to its value, by any rights in rem lawfully established in favor of third parties.

(b) In cases where confiscation is ordered under a judgment by default, the confiscated property shall accrue to the Republic of Palau and be liquidated in accordance with law. However, if the Supreme Court, ruling on an application to set aside such judgment, acquits the person prosecuted, it shall order that the Republic of Palau pay full and fair restitution for the value of the confiscated property, unless it is established beyond a reasonable doubt that such property is the proceeds of crime committed in Palau.

Section 36. Applicable law for rulemaking and regulations.

The Administrative Procedure Act, 6 PNC Chapter 1, shall apply for all rules and regulations promulgated under this Act.

Section 37. Cultural traditions exempted from compliance with this Act.

This Act shall not apply to bona fide transfers or exchanges of property pursuant to recognized cultural traditions and customs of Palau.