

RPPL No. 7-27 (Re: as Senate Bill No. 7-21, SD2, HD1)

SEVENTH OLBIIIL ERA KELULAU

First Regular Session, January 2005

RPPL No. 7-27
(Re: Senate Bill No. 7-21, SD2, HD1)

AN ACT

To amend Title 17 of the Palau National Code by the addition of a new Chapter, to be called the Cash Courier Disclosure Act of 2007, to establish measures to detect the physical cross-border transportation of currency and negotiable instruments, with the objective of ensuring that terrorists and other criminals cannot finance their activities or launder the proceeds of their crimes through such transportation; to amend RPPL No. 6-3 to establish measures to combat illegal banking activities; and for other purposes.

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

Section 1. Purpose. The purpose of this Act is to establish measures to detect the physical cross-border transportation of currency and negotiable instruments, and to prevent terrorists and other criminals from financing their activities or laundering the proceeds of their crimes.

Section 2. Short title. This Act shall be known and may be cited as the “Cash Courier Disclosure Act of 2007”.

Section 3. Amendment. 17 PNC is hereby amended to add the following new chapter:

“Chapter 39

Cash Courier Disclosure Act of 2007

§ 3901 Definitions. In this Act, unless the context otherwise requires:

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- (a) “*Attorney General*” means the Attorney General of the Republic of Palau;
- (b) “*Currency*” refers to banknotes and coins that are in circulation as a medium of exchange;
- (c) “*Declaration*” means the form prescribed by the Division of Customs, which requires a signed, written disclosure of the transport of currency or negotiable instruments into or out of the Republic of Palau;
- (d) “*Division of Customs*” means the Ministry of Finance, Bureau of Revenue, Customs & Taxation, Division of Customs;
- (e) “*Financial Intelligence Unit*” means the governmental unit created pursuant to section 15 of RPPL No. 6-4;
- (f) “*negotiable instruments*” includes monetary instruments in bearer form, including but not limited to, checks, travelers checks, promissory notes and money orders that are either endorsed without restrictions, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery, such as signed instruments, with the payee’s name omitted.
- (g) “*person*” means any natural or legal person;
- (h) “*Supreme Court*” means the Supreme Court of the Republic of Palau, and all its divisions;
- (i) “*transport cash or negotiable instruments*” refers to any in-bound or out-bound physical transportation of currency or negotiable instruments from one country

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to another country. The term includes the following modes of transportation:

- (1) physical transportation by a natural person, or in that person's accompanying luggage or vehicle;
- (2) shipment of currency through containerized cargo; or
- (3) the mailing of currency or negotiable instruments by a natural or legal person.

§ 3902 Report on the transport of cash and negotiable instruments.

(a) Any person who attempts to, or physically transports cash or negotiable instruments in an aggregate amount of \$10,000 or more (or its equivalent in foreign currency) at one time into or out of the Republic of Palau shall make a written, signed Declaration thereof to the Division of Customs on the form prescribed by the Division of Customs. A copy shall be provided to the Financial Intelligence Unit. A person is deemed to have caused such transportation, mailing or shipping when he or she, aids, abets, counsels, commands, procures, or requests it to be done by a financial institution or any other person.

(b) This section shall not require a Declaration to be submitted by:

- (1) A bank licensed by the Financial Institutions Commission or its agent in respect to currency or other negotiable instruments physically carried into or out of Palau for its own domestic use or purposes;
- (2) A common carrier of passengers in respect to currency or other negotiable instruments in the possession of its passengers;

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(3) A common carrier of goods in respect to shipments of currency or negotiable instruments not declared to be such by the shipper;

(4) A traveler's check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public.

(c) A transfer of funds through normal banking procedures that does not involve the physical transportation of currency or negotiable instruments is not required to be reported by this section. This section does not require that more than one Declaration be filed covering a particular transportation, mailing or shipping of currency or other negotiable instruments with respect to which a complete and truthful Declaration has been filed by a person. However, no person required by paragraph (a) of this section to file a Declaration shall be excused from liability for failure to do so if, in fact, a complete and truthful Declaration has not been filed. A copy of any Declaration that is filed shall accompany the currency until its final destination.

§3903 Requirement to promulgate regulation. The Division of Customs shall promulgate such regulations as may be necessary to enforce the requirements of this Act.

§3904 Availability of information.

(a) If the Division of Customs suspects or has reasonable grounds to suspect that a negotiable instrument or currency is being transported in violation of this Chapter, or if the Division of Customs suspects or has reasonable grounds to suspect

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that any negotiable instrument or currency, regardless of amount, is the proceeds of criminal activity or related to terrorist financing, it shall report the factual basis to the Attorney General, and file a suspicious transaction report with the Financial Intelligence Unit within 48 hours. The report filed with the Financial Intelligence Unit shall be in form and manner set forth in regulations promulgated by the Financial Intelligence Unit for this purpose.

(b) The Division of Customs and the Financial Intelligence Unit may make any information set forth in any report received pursuant to this Chapter available to another agency of the government or to an agency of a foreign government, upon the request of the head of such department or agency made in writing and stating the particular information desired, and the criminal, tax or regulatory purpose for which the information is sought.

(c) Any information made available under this section to other departments or agencies of the government of Palau, or any foreign government, shall be received by them in confidence, and shall not be disclosed to any person except for official purposes relating to the investigation, proceeding, or matter in connection with which the information is sought.

§3905 Enforcement Authority With Respect to Transportation of Currency or Negotiable Instruments.

(a) If an officer of the Division of Customs suspects or has reasonable cause to believe that there is a negotiable instrument or currency being transported without

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the filing of the Declaration required by § 3902 of this chapter, he or she may stop and search, without a search warrant, a vessel, aircraft, or other conveyance, envelope, or other container, or person entering or departing from the Republic of Palau with respect to which or whom the officer reasonably believes is transporting such instrument or currency. Such authority shall only be applicable at ports of entry to the Republic of Palau.

(b) If an officer of the Division of Customs suspects or has reasonable cause to believe that a negotiable instrument or currency is the proceeds of a criminal activity or are related to terrorist financing, he or she may stop and search, without a search warrant, a vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the Republic of Palau with respect to which or whom the officer reasonably believes is transporting such instrument or currency. Such authority shall only be applicable at ports of entry to the Republic of Palau.

(c) If the Office of the Attorney General has reason to believe that currency or negotiable instruments in an aggregate amount of \$10,000 or more (or its equivalent in foreign currency) are being or have been transported, and no Declaration has been filed, or a materially incomplete or inaccurate Declaration has been filed, the Office of the Attorney General may apply to the Supreme Court for a search warrant. Upon a showing of probable cause, the court may issue a warrant authorizing the search of any or all of the following:

- (1) One or more designated persons;

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(2) One or more designated or described places or premises;

(3) One or more designated or described letters, parcels, packages, or other physical objects;

(4) One or more designated or described vehicles.

(d) If an officer of the Division of Customs has reasonable cause to believe that a negotiable instrument or currency is being transported without the filing of the Declaration required by § 3902 of this chapter, or that a negotiable instrument or currency is the proceeds of crime or related to terrorist financing, the officer may seize the currency or negotiable instrument and hold them for a period of 14 calendar days pending investigation of the matter. For good cause shown, the Office of the Attorney General may apply to the Supreme Court for additional 14-day extensions of this period.

§3906 Penalties. The penalties stated below are in addition to any criminal or civil penalties which may be imposed under any other provisions of law applicable in the Republic of Palau.

(a) Administrative Penalty. For any failure to file a Declaration required under this Chapter, or for filing such a Declaration containing any material omission or misstatement, the Chief of the Division of Customs may assess an administrative penalty of 5% of the amount of the currency or negotiable instruments transported, mailed, or shipped.

(b) Civil Penalty. The Attorney General may bring a civil action in the

Republic of Palau against any person who willfully violates the requirements of this Chapter. Upon proof by a preponderance of the evidence that such person committed the offense, the person shall be subject to a civil penalty not to exceed twice the amount of the currency or negotiable instruments carried, or attempted to be carried, by the Defendant. Willfulness may be inferred through objective factual circumstances.

(c) Penalties applicable to corporate entities. Corporate entities, other than the Republic of Palau, on whose behalf or for whose benefit a violation of § 3902 has been committed by one or their agents or representatives, shall be fined in an amount equal to two times the fines specified for natural persons. In the case of corporate entities that are found guilty of three or more offenses under § 3902 within a five-year period, such entities may be:

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

(2) ordered to close permanently; or

(3) required to publicize the judgment in the press or by radio or television.

§3907 Applicable law for rulemaking and regulations. The Administrative Procedure Act, 6 PNC Chapter 1, shall apply for all rules and regulations promulgated under this Act.”

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Section 4. Amendment. Section 3 of RPPL No. 6-3 is hereby amended to add subsections (g), and (h), as follows:

“Section 3(g) The Attorney General may bring a civil action in the Republic of Palau against any natural or legal person who attempts to, or engages in the business of a bank, securities broker, or securities dealer in the Republic of Palau without a valid license by the Financial Institutions Commission. Upon proof by a preponderance of the evidence that such person committed the offense, a natural person shall be subject to a civil penalty of at least \$25,000. Corporate entities, other than the Republic of Palau, on whose behalf or for whose benefit a violation of Section 3(g) has been committed by one or their agents or representatives, shall be fined in an amount equal to two times the fines specified for natural persons, or the amount of gross profit realized by the entity for the two years prior to the offense, whichever is greater. Additionally, such entities may be:

- (1) permanently, or for a minimum of five years, banned from directly or indirectly carrying on the business activities in the Republic of Palau for which they are licensed or conducted at the time of the offense;
- (2) ordered to close permanently; or
- (3) required to publicize the judgement in the press or by radio or television.

Section 3(h) Actions under either Section 3(g) or 3(h) shall not prejudice any action taken by the Board pursuant to its powers under the FIA.”

Section 5. Effective date. This Act shall take effect upon its approval by the

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President of the Republic, or upon its becoming law without such approval.

PASSED: April 25, 2007

Approved this _____ day of _____, 2007.

Tommy E. Remengesau, Jr.
President
Republic of Palau