

FINANCIAL INTELLIGENCE UNIT

Republic of Palau

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Guidance: Attorney Exceptions to Money Laundering and Proceeds of Crime Act (“MLPCA”) and Designated Non-Financial Businesses and Professions (“DNFBPs”) Regulations

This document consolidates the attorney exceptions related to confidentiality and attorney-client privilege laid out in the MLPCA and DNFBP Regulations.

In addition to these exceptions, please note that the [ABA Model Rule 1.6\(b\)\(6\)](#) allows for the disclosure of information “relating to representation of a client to the extent the lawyer reasonably believes necessary . . . to comply with other law”, which provides a foundation for the reporting obligations in the MLPCA and DNFBP Regulations.

Exception to Non-Disclosure of Reports Made to FIU

a. Obligation Not to Disclose Fact of CTRs or STRs Filings to Customer or 3rd Party

No Designated Non-Financial Businesses and Profession (“DNFBP”) can disclose to “any customer or third party that a report or any other information will be, is being or has been submitted to the [FIU] . . . or that money laundering or financing of terrorism investigation is being or has been carried out.” Money Laundering and Proceeds of Crime Act (“MLPCA”), 17 P.N.C.A § 3322(c). However, attorneys may do so when they are “seeking to dissuade a client from engaging in illegal activity” (MLPCA § 3322(d)), but cannot disclose to the client “information that would identify or likely identify the person who prepared or made the report . . . or handled the underlying transaction.” MLPCA §3322(e).

Exceptions that Preserve Ethical Duty of Confidentiality and Attorney Client Privilege

a. Bookkeeping

Under MLPCA § 3326(a), DNFBPs are required to maintain “all books and records with respect to customers and transactions” in accordance with the section and “ensure that such records and underlying information are available on a timely basis to the [FIU]” MLPCA § 3326(a). However, under MLPCA § 3326(b)(c), attorneys are not required to have available for the FIU certain records and underlying information. This exclusion applies to account files, business correspondence, and copies of documents that include identities of customers and beneficial owners, or records of transactions sufficient to reconstruct each individual transaction for account and non-account holders. MLPCA

§§3326(b)(1)-(2). However, they are required to maintain “appropriate record keeping sufficient to provide proof to the FIU of compliance with the Preventative Measures and Monitoring required by [Subchapter II]” MLPCA § 3326(c).

The above exclusion does not include currency transaction reports (“CTRs”) or suspicious transaction reports (“STRs”) made to the FIU. However, under MLPCA § 3326(c), attorneys must maintain copies of all suspicious transaction reports made pursuant to MLPCA § 3321 (Suspected Terrorism Reporting) and MLPCA § 3322 (CTR and STR Reporting), including accompanying documentation (MLPCA § 3326(b)(3)); and the written record of findings with respect to transactions referenced in MLPCA § 3314 (Complex Transactions) (MLPCA § 3326(b)(4)). These records must be maintained for 6 years. Designated Non-Financial Business and Professions Regulations Part IV(6)

b. Exception to Obligation to Report CTRs and STRs

Attorneys have no obligation to report information required under MLPCA § 3322(a) (Currency Transaction Reports) or MLPCA § 3322(b) (Suspicious Transaction Reports) when “they receive or obtain from a client in the course of developing a legal position for a client, performing the task of defending a client or representing a client in, or concerning judicial proceedings, including rendering advice on how to avoid such judicial proceedings, regardless as to whether such information is received or obtained before, during, or after such judicial proceedings.” MLPCA § 3322(i).

c. Permissible Disclosures under ABA Rule of Professional Conduct No. 1.6(b)(2)-(3)

For reports that do not fall within the exception under the previous section (Exception to Obligation to Report CTRs and STRs), the MLPCA deems those reports (includes STRs, CTRs, and Suspected Terrorism Financing Reporting) as permissible disclosures in accordance with the American Bar Association Rule of Professional Conduct No. 1.6(b)(2) and (3). This ABA Rule provides a mechanism to “prevent, mitigate, or rectify a crime, fraud, or substantial injury to the financial interests or property of another that is reasonably certain to occur, or that has occurred, and in furtherance of which the lawyer’s legal services have been utilized by the client.” MLPCA § 3322(i).

d. Exception to FIU Requirement to Provide Certain Information when the Communication is Privileged

Under DNFBP Regulation Part IV(8), where an attorney still determines a requirement to give information, produce a document, or answer a question by the FIU would require the attorney to disclose a privileged communication made by, on behalf of, or to, the attorney, the attorney is entitled to refuse to the comply with the requirements unless:

1. The communication was made by, to, or on behalf of a body corporate, that body corporate is under official management and is being wound up, and the

official manager or liquidator consents to the attorney complying with the requirement; or

2. The person to whom, by, or on behalf of the attorney consents to the attorney comply with the requirement. DNFBP Regulation Part IV(8.1).

However, under DNFBP Regulation Part IV(8.2), if an attorney refuses to comply, they must give the FIU written notice setting out:

1. The name and address of the person to whom, by whom, or on behalf of whom the communication was made; or
2. when the communication is made in writing; sufficient information to identify the document that contains the communication.
