

FINANCIAL INTELLIGENCE UNIT

Republic of Palau

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Guidance (FAQ): Attorney Compliance Requirements Under Money Laundering and Proceeds of Crime Act (“MLPCA”) and Designated Non-Financial Businesses and Professions (“DNFBPs”) Regulations

1. What is the purpose of the MLPCA and its DNFBP Regulations?

The Money Laundering and Proceeds of Crime Act (“MLPCA”) was enacted and the Financial Institutions and Designated Non-Financial Businesses and Professions (“DNFBP”) Regulations promulgated to protect the Republic of Palau from money laundering and terrorism financing, and to fulfill the ROP’s international obligations towards compliance with the Financial Action Task Force (“FATF”) 40 Recommendations (and now 11 Immediate Outcomes). Attorneys are considered DNFBPs under the FATF Standards.

FATF is the international anti-money laundering and counter financing of terrorism (“AML/CFT”), and anti-proliferation financing standard-setting body. The Asia/Pacific Group is an associate member of the FATF and the regional FATF-style body to which Palau is a member. As a member of APG, Palau is expected to and has agreed to commit to the FATF Standards “without reservation.” Non-compliance, or reversion of compliance, can result in grey- or black-listing and heightened pressure from the APG membership to comply. Additionally, it can impact a country’s interest rates on loans from international funders, the ability to obtain loans or grants from international funders, correspondent banking relationships, use of the country’s debit cards abroad, and, as a result of the heightened international pressure, require a whole government approach to address deficits.

For more information on FATF, APG, Palau’s obligations, and/or impact of non-compliance, please see: *Overview: The Financial Action Task Force Standards, Palau’s Obligations as a Member of the Asia/Pacific Group, and Impact of Non-Compliance.*

2. What is the Republic of Palau’s Financial Intelligence Unit (“FIU”)?

The FIU is an independent supervisory agency that supervises Financial Institutions and DNFBP’s for anti-money laundering and counter terrorism financing (“AML/CFT”) compliance under the MLPCA and DNFBP Regulations. The FIU is not within the Financial Institutions Commission (“FIC”) although the two government bodies share a Governing Board. The FIU is mandated by statute to receive currency transaction reports and suspicious transaction reports from the sectors it supervises, and initiate investigations based on those reports. These reports are similar to reports financial institutions are required to make under both the MLPCA and U.S. law.

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3. Why are attorneys classified as DNFBPs in the MLPCA?

Because attorney services could be intentionally targeted to be used for AML/CFT and proliferation financing, attorneys have been specifically listed under FATF Recommendation 22 (DNFBP's Customer Due Diligence), Recommendation 23 (DNFBP's: Other Measures), and Recommendation 28 (Regulation and Supervision of DNFBP's) as DNFBPs. As a result, the MLPCA and DNFBP Regulations additionally include attorneys as DNFBPs, which is the international standard that countries are expected to follow.

4. Which attorneys need to comply with the MLPCA and DNFBPs?

It will primarily be members of the active, private Palau Bar Association that need to comply with the MLPCA and regulations; however, each attorney who is not automatically exempt will need to determine whether they need to comply or can submit the exemption form (*ATTORNEY EXEMPTION FORM: 2023 Palau Bar Association Attorney Exemption from Compliance with Money Laundering and Proceeds of Crime Act ("MLPCA") and Designated Non-Financial Businesses and Professions ("DNFBPs") Regulations*).

The attorneys who need to comply with the Act and Regulations are "lawyers . . . when they prepare for, engage in, or carry out transactions for a client concerning [:]

- The buying or selling of real estate;
- managing of client money, securities or other property;
- management of a bank, savings, or securities accounts;
- organization of contributions for the creation, operation, or management of legal persons;
- creation, operation or management of legal persons or arrangements, and buying and selling of business entities." MLPCA § 3301(j)(4)

5. If I'm required to comply with the MLPCA and DNFBP Regulations, do I have to include my entire practice?

No, you do not. You just need to include the part of your practice as an attorney in the Republic of Palau that falls within the parameters of the transactions listed in MLPCA § 3301(j)(4).

6. What do I need to do if I determine that part of my practice does not fall under MLPCA § 3301(j)(4) and I not need to comply with the MLPCA or DNFBP Regulations?

You may be required to file the exemption form (*ATTORNEY EXEMPTION FORM: 2023 Palau Bar Association Attorney Exemption from Compliance with Money Laundering and Proceeds of Crime Act ("MLPCA") and Designated Non-Financial Businesses and Professions ("DNFBPs") Regulations*). The following can be used as a guide for whether you need to file the exemption form:

Private Bar (Active): If you are a member of the private bar and are active in Palau, but either do not have any cases in Palau or do not prepare for, engage in, or carry out the transactions listed in MLPCA § 3301(j)(4), you can file for an annual exemption with the FIU.

ROP Government Attorneys (including MLSC): You are exempt if you are a Government Attorney, are not authorized to take on additional work in the Republic of Palau outside your government position, and do not prepare for, engage in, or carry out the transactions listed in MLPCA § 3301(j)(4). You can file an annual exemption on the form provided by the FIU.

Private Bar (Inactive): You are exempt until such time that you become active and determine whether part of your practice falls under MLPCA § 3301(j)(4). You do not need to file an exemption form with the FIU until you become an active member of the Palau Bar Association.

Justices and Judges: Justices and judges are exempt during the duration of their time on the bench and do not need to file an exemption form with the FIU, unless they practice in some capacity outside their position as a justice or judge.

Pro Hac Vice: You are exempt until you join the Palau Bar Association as a member and do not need to file an exemption form with the FIU until that time. However, the attorney that you are associated with will be required to comply with the MLPCA if the case falls within the parameters of the MLPCA definition above.

7. If I am required to file an exemption form, where is the form available?

The exemption form (*ATTORNEY EXEMPTION FORM: 2023 Palau Bar Association Attorney Exemption from Compliance with Money Laundering and Proceeds of Crime Act (“MLPCA”) and Designated Non-Financial Businesses and Professions (“DNFBPs”) Regulations*) is available on the FIU website (palaufiu.org) under DNFBPs.

8. What do I need to do to comply with the MLPCA and DNFBP Regulations, if I’m required to comply?

You need to:

- i. Do a risk assessment of your practice;
- ii. Write an AML/CFT Policy;
- iii. Establish Internal Policies and Procedures to comply with MLPCA, the DNFBP Regulations, and your AML/CFT Policy;
- iv. Implement the AML/CFT Policy and Internal Policies and Procedures.

9. What needs to be included in my Internal Policies and Procedures (Answer iii to Question 8 above)?

You need to include:

- i. AML/CFT Program Management;
- ii. Continued Risk-based approach to clientele, businesses, and services;
- iii. Record Retention;
- iv. Employee training and awareness;
- v. Employee screening;
- vi. Misuse of information technology;
- vii. Customer Due Diligence, including Enhanced Customer Due Diligence;

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- viii. Detection of unusual and/or suspicious transactions;
- ix. Monitoring and reporting obligations.

10. Does the MLPCA or Regulations force me to violate my ethical duty to confidentiality or attorney-client privilege?

No, it does not. There are a number of carveouts in the MLPCA and the DNFBP Regulations that preserve an attorney’s ethical duty to confidentiality and attorney-client privilege. Please see the document titled *Guidance: Attorney Exceptions to Money Laundering and Proceeds of Crime Act (“MLPCA”) and Designated Non-Financial Businesses and Professions (“DNFBPs”) Regulations* for more information.

Additionally, ABA Model Rule 1.6, which governs the Confidentiality of Information, 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”¹ In this case, the other law would be the MLPCA.

For attorneys concerned about their ethical obligations in other jurisdictions, the American Bar Association Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 504 on March 1, 2023. It provides guidance on how to determine which jurisdiction’s ethics rules should apply when handling matters in multiple jurisdictions. See both [ABA Issues Ethics Opinion to Guide Lawyers Practicing in Multiple Jurisdictions](#)² and [Formal Opinion 504](#)³.

Should the FIU or any other competent law enforcement agency determine that there was money laundering or terrorism financing and the attorney would have been privy to it, the attorney bears the burden to prove that disclosure falls within the parameters of confidentiality or attorney-client privilege.

11. But the U.S. isn’t requiring their attorneys to do this, why do we have to do it?

Like the United States and all other FATF or FATF-Style Regional Body member states, the Republic of Palau is required to put in place these measures by international obligation. In preparation for the initiation of their 2026 FATF Mutual Evaluation, the United States has initiated a number of laws and regulations to meet the gaps in their 2016 FATF Mutual Evaluation including the requirements listed in FATF Recommendations 22, 23, and 28. What the outcome

¹ American Bar Association Model Rules Rule 6(b)(6), Confidentiality of Information:

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information/

² ABA Issues Ethics Opinion to Guide Lawyers Practicing in Multiple Jurisdictions,

<https://www.americanbar.org/news/abanews/aba-news-archives/2023/03/ethics-opinion-multiple-jurisdictions/>

³ American Bar Association, Formal Opinion 504:

https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-504.pdf

will be is still playing out, but the Department of Treasury is putting pressure on the American Bar Association and the American Bar Association is playing an active role in responding to and initiating initiatives.

The most relevant part of the American Bar Association's concern regarding proposed legislation and regulations in the United States rests on the violation of confidentiality and attorney-client privilege. However, the attorney exceptions provided in the MLPCA and DNFBP Regulations address this issue, working to preserve an attorney's ethical duty to these two ethical tenants. Please see the document titled *Guidance: Attorney Exceptions to Money Laundering and Proceeds of Crime Act ("MLPCA") and Designated Non-Financial Businesses and Professions ("DNFBPs") Regulations* for more information on the MLPCA and DNFBP Regulations considerations of ethical conduct.

12. What are the deadlines?

No later than March 1, 2024, AML/CFT Policy and Internal Policies and Procedures based on the MLPCA and DNFBP Regulations must be submitted electronically to the FIU at adminspecially@palaufiu.org. The FIU expects compliance with currency transaction reporting and suspicious transactions reporting in 2024 and anticipates initial onsite examinations in 2024.

The FIU notified every member of the Palau Bar Association of their requirement to comply with the MLPCA and Regulations via mail in December 2022, providing until April 25, 2023 to comply with the MLPCA. On March 27, 2023, the Palau Bar Association requested an extension to seek technical assistance in the creation of model policies and procedures that would work to meet the MLPCA's AML/CFT Policy and Internal Policies and Procedures requirements. On April 7, 2023, the FIU provided an extension to Palau Bar Association until December 1, 2023, with a requirement to provide updates on June 1, 2023, August 1, 2023 and October 1, 2023. The Palau Bar Association provided the required updates. On November 20, 2023, the Palau Bar Association requested an extension to March 1, 2024 based on timeframes provided by the technical assistance provider. On November 22, 2023, the FIU granted the extension. With the grant of that extension, the FIU required that 1) the Palau Bar Association communicate the extension to the members, 2) that each attorney that is required to comply with the MLPCA and DNFBP Regulations assess whether they are exempt from compliance and, if so, submit the exemption form by December 1, 2023, and 3) where the attorney was determined not to be exempt, to e-mail the FIU Director directly and request an extension by December 1, 2023.

13. Where can I find the MLPCA and Regulations?

You can find them at the FIU website: palaufiu.org. The website is a work in progress, but the FIU will continuously update the website to include more information. The MLPCA and Regulations can also be found in the Google Drive All Law folder.

14. HELP! I don't know how to do this!

The FIU has provided four presentations on the topic, with the last one taking place in February 2023. The last presentation was recorded. If you are interested in reviewing it, please contact adminspecially@palaufiu.org. The FIU has and will also be sending out resources and guidance

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through the Palau Bar Association as resources are developed or as the FIU receives them. The FIU will also be posting some resources to the FIU website (palaufiu.org). If you would like to be on a mailing list for information directly from the FIU, please e-mail your contact information to admins specialist@palaufiu.org, with the subject line “Attorney Mailing List.”

15. Did I know about the requirement to comply with the MLPCA and Regulations?

The FIU promulgated the DNFBP Regulations in 2021 pursuant to the Administrative Procedure Act, 6 PNCA Subchapter II. The DNFBP Regulations were amended and put through the Administrative Procedure Act process again in 2022. The FIU notified every member of the Palau Bar Association of their requirement to comply with the MLPCA and DNFBP Regulations via mail in December 2022, providing six months to comply with the Act, and included both an earlier version of this guidance and an earlier version of *Guidance: Attorney Exceptions to Money Laundering and Proceeds of Crime Act (“MLPCA”) and Designated Non-Financial Businesses and Professions (“DNFBPs”) Regulations*. The FIU put on CLE presentations in October 2022, December 2022, and February 2023 and has provided updates via the Palau Bar Association listserv.

16. What happens if I do not comply?

Under DNFBP Regulation Part V(1), if the FIU finds contravention of any provision, the FIU can impose appropriate enforcement and sanctions, including fines, on the attorney, its directors, senior managers, officers or employees.

Where convicted of “intentionally or through criminal negligence” failing to comply with Subchapter II or III of the MLPCA and accompanying regulations, the person “shall” be found guilty of a Class C felony or a maximum of ten thousand dollars (\$10,000), or both.” MLPCA §3319(a) and §3327(a). If found guilty the MLPCA also notes that a DNFBP can be banned from the profession that provided the opportunity to the offense. MLPCA §3319(b) and MLPCA §3327(b).

Finally, in addition to these penalties, should an attorney intentionally or through criminal negligence fail to comply with the obligations of the MLPCA (Chapter 33) or regulations, the lawyer can be subjected to measures and sanctions in MLPCA §3329. Sanctions include the following: written warnings, order to comply with specific instructions, order to submit regular reports, fines, the publication of information on the measures taken, and/or other measures. The FIU published an FIU Rulebook to the FIU website (palaufiu.org) regarding this process.

17. If I have questions, who do I talk to you?

You can call the FIU at +680-488-5080 or e-mail the director, Adair Fincher, at director@palaufiu.org.

Guidance Updates

December 16, 2022: Published first version of this guidance.

November 6, 2023: FAQ 7 updated to reflect change in compliance deadline information; updated FAQ 10 updated to further clarify ability of attorneys to comply with ethical obligation under American Bar Association Model Rules of Professional Conduct; FAQ 11 updated to provide additional information; FAQ 12 updated to provide additional compliance deadline information; FAQ 14 updated to provide additional information; moved FAQ 15 to 17 and created new FAQ 15 around actions taken by FIU to provide information on requirement to comply; and created FAQ 16 to address penalties for non-compliance. Edited this guidance generally for clarity and updated following references to this guidance, attorney exception information, and exemption form throughout this guidance to following:

- *ATTORNEY EXEMPTION FORM: 2023 Palau Bar Association Attorney Exemption from Compliance with Money Laundering and Proceeds of Crime Act (“MLPCA”) and Designated Non-Financial Businesses and Professions (“DNFBPs”) Regulations*
- *Guidance: Attorney Exceptions to Money Laundering and Proceeds of Crime Act (“MLPCA”) and Designated Non-Financial Businesses and Professions (“DNFBPs”) Regulations*
- *Guidance (FAQ): Attorney Compliance Requirements Under Money Laundering and Proceeds of Crime Act (“MLPCA”) and Designated Non-Financial Businesses and Professions (“DNFBPs”) Regulations*

February 20, 2024: FAQ 1 updated for clarity and content regarding attorneys FATF, APG, Palau’s obligations, and non-compliance with FATF Standards and provided reference to *Overview: The Financial Action Task Force Standards, Palau’s Obligations as a Member of the Asia/Pacific Group, and Impact of Non-Compliance.*; FAQ 2 updated to define FIC and better define reports; FAQ 3 updated for clarity; FAQ 8 updated for typo; FAQ 11 updated for clarity and to provide links in footnotes; FAQ 12 updated for clarity around lawyer compliance in the United States; FAQ 13 updated to reflect compliance with March 1, 2024 deadline and to reflect history of actions taken to this point; FAQ 14 to provide direction for where else to find MLPCA and Regulations; FAQ 15 updated for clarity and to provide contact information; FAQ 16 technical update; Guidance Updates: provided history of guidance updates. Edited this guidance generally for clarity.