

Chapter 10

Financial Institutions

Subchapter 1

General Provisions

[Header A: **GENERAL PROVISIONS 26 PNCA § 1002**

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[Footer A: Supp. 6 26 - 29]

§ 1001. Scope of operation of this chapter.

§ 1002. Definitions.

§ 1003. Prohibitions and exemptions.

§ 1001. Scope of operation of this chapter.

(a) This chapter shall apply to banks, securities brokers, and securities dealers (hereinafter referred to as "financial institutions"), their shareholders, administrators, employees, agents and affiliated entities, and applicants for bank credit.

(b) Persons other than financial institutions who are in violation of provisions of section 1003 shall be subject to the penal provisions of subchapter VII.

Source

RPPL 6-3 § 2[1], modified.

Notes

RPPL 7-41 § 1 reads: "Preamble. The Olbiil Era Kelulau of the Republic of Palau (hereinafter referred to as the "OEK"), endeavoring to strengthen the economy in the Republic of Palau by providing measures to protect the interests of consumers of financial services, to prevent systemic risk to the financial system, to provide sufficient scope for market forces to operate in the field of financial services, and to protect the reputation of the Republic in the international financial community, and establishing rules for the licensing, supervision and regulation of financial institutions by the Financial Institutions Commission of the Republic of Palau, hereby finds it to be in the best interest of the Republic to enact laws governing banks and financial institutions operating either in the Republic of Palau or under a grant of authority by the Republic of Palau."

Section 3 of RPPL 7-41 reads: “Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and the[is] this end the provisions of this Act are severable.”

§ 1002. Definitions.

Wherever used in this chapter, the following terms shall have the following meanings:

(a) “administrator” means any person who is an officer of a financial institution or other juridical person, including any member of the board of directors or the Audit Committee, or the head of a department of the organization but shall only apply to a person who is regularly employed at the Palau office of the financial institution.

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(b) “affiliate” of a bank or other person means a subsidiary of such person or a company of which the person is a subsidiary or a company that is under common control with the person.

(c) “bank” means a person engaged in the business of accepting deposits in the Republic of Palau from residents and non-residents and using such funds to make extensions of credit or investments for the account of and at the risk of the person carrying on the business, including branches of banks organized in other jurisdictions.

(d) “branch office” means a place of business that forms a legally dependent part of a financial institution and that conducts financial activities.

(e) “capital” means the net worth or own funds of a financial institution that is the difference between its assets and liabilities in accordance with balance sheet accounts that reflect sound accounting principles.

(f) “capital distribution” means a distribution of cash or other property by a financial institution to its owners made on account of that ownership, but not including (i) any distribution consisting only of shares of the financial institution or rights to purchase such shares or (ii) any amount paid on deposits of a cooperative bank.

(g) “credit” means any advances or commitments to advance funds by a financial institution to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person. The term includes a contractual liability of a financial institution to advance funds to or on behalf of a person, indebtedness evidenced by a lease financing transaction in which the financial institution is the lessor, and an overdraft funded by

the financial institution on behalf of a person. The term does not include accrued but uncollected interest or discounted interest.

(h) "credit documentation" means, with respect to an agreement entered into by a financial institution with any other person for the provision of credit:

(1) current financial statements of the borrower as may be required by a financial institution and any guarantor of the borrower's indebtedness;

(2) a description of any collateral over which the lender has any mortgage or charge as security for the due payment of the indebtedness to it and an appraisal of its value;

(3) a statement of the terms of the credit, including the principal amount, rate of interest, schedule of repayments and the borrower's objective or purpose for borrowing; and

(4) the signature of each person who authorized the credit on behalf of the bank.

(i) "debt security" means any negotiable instrument of indebtedness (in certificated or in book-entry form) and any other instrument equivalent to such instrument of indebtedness, and any negotiable instrument giving the right to acquire another negotiable debt security by subscription or exchange.

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(j) "deposit" means a sum of money paid on terms:

(1) that it is to be repaid in full, with or without interest or premium of any kind, and either on demand or at a time agreed by or on behalf of the person making the payment and the person receiving it; and

(2) that are not referable to the provision of property or services or the giving of security;

whether or not evidenced by any entry in a record of the person receiving the sum, or by any receipt, certificate, note or other document.

(k) "dollars" means United States Dollars or the equivalent in non-United States currency.

(l) "equity interest" means any ownership right or voting right with respect to a person or undertaking.

- (m) "executive officers" are those bank officers who have authority to make or influence bank policy.
- (n) "financial institutions" means banks, securities brokers, and securities dealers.
- (o) "foreign financial institution" or "foreign bank" or "foreign branch bank" means a financial institution organized under the laws of another jurisdiction with a branch office or subsidiary in the Republic of Palau.
- (p) "guidance" means non-obligatory recommendations issued for the information of financial institutions.
- (q) "license" means an authorization issued by the Financial Institutions Commission of the Republic of Palau granting the right to a financial institution to engage in financial activities.
- (r) "order" means an obligatory directive in the implementation of this chapter or of a regulation issued under this chapter pursuant to § 1132 issued to one or more financial institutions that constitute less than a class of financial institution.
- (s) "person" includes an individual, a company, partnership, association and any group of persons acting in concert, whether or not incorporated.

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- (t) "principal shareholder" means a person that owns directly or indirectly ten percent or more of any class of shares with voting rights of a financial institution.
- (u) "Palau bank" or "Palau financial institution" means an institution organized and chartered under the laws of the Republic of Palau.
- (v) "regulation" means a general obligatory directive in the implementation of this chapter pursuant to § 1132 issued to one or more classes of financial institutions.
- (w) "related persons" to a financial institution are: (1) any administrator of the financial institution; (2) any principal shareholder of the financial institution; (3) any person who is related to such administrator or principal shareholder by marriage, consanguinity to the second degree, or business interest; (4) any legal person that has a significant interest in a person in which the financial institution has a significant interest.
- (x) "remedial action" means measures to correct the infractions described in section 1091 which may include: (1) the establishment of a plan to increase capital to achieve compliance with this chapter; (2) the establishment of new committees of the

financial institution to oversee credit administration, asset and liability management, or internal audit and controls; (3) replacement of the heads of departments; or (4) establishing and enforcing internal controls.

(y) "significant interest" means a direct or indirect holding of an interest in a person or undertaking that represents the equivalent of twenty percent (20%) or more of the equity or of any class of shares with voting rights, or that makes it possible to exercise a significant influence over the management or policies of that person or undertaking.

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(z) "subsidiary" means any person in which another person holds:

(1) the equivalent of fifty percent (50%) or more of any class of shares with voting rights; or

(2) a significant interest that permits such other person or group of persons to control the management or policies of the subsidiary.

(aa) "security" means: any evidence of indebtedness; share; investment contract; certificate of interest or participation in a profit-sharing agreement; limited partnership interest; collateral-trust certificate; pre-organization subscription; voting-trust certificate; any put, call, straddle, or option or warrant on a security or group or index of securities; or any interest or instrument commonly known as a "security"; the term does not include obligations of a bank regulated under the laws of the Republic of Palau that are entered into by the bank in the ordinary course of its banking business directly with its customers and not through intermediaries.

(bb) "securities broker" means a person engaged in the business of buying or selling securities for the account of a customer.

(cc) "securities dealer" means a person engaged in the business of buying or selling securities for its own account.

(dd) "voting shares" means shares in the capital of the issuer and any other shares of any designation or description that carry the right to vote on any general resolution at a general or special meeting of the issuer.

Source

RPPL 6-3 § [2]2, modified. Subsections (g), (h)(1), (q), (r), (v), (z), and (aa) amended by RPPL 7-41 § 2[2], modified.

§ 1003. Prohibitions and exemptions.

(a) No person shall engage in the business of a bank, securities broker, or securities dealer without a license issued by the Financial Institutions Commission of the Republic of Palau.

[Header B: 26 PNCA § 1003 FINANCIAL INSTITUTIONS

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(b) No person shall use the words “bank”, “trust”, “trust company”, or “financial corporation”, or derivatives of these words, with respect to a business, product, or service without a license as a bank issued by the Financial Institutions Commission of the Republic of Palau, unless such usage is established or recognized by law or international agreement, or unless it shall be clear from the context in which the words “bank”, “trust”, “trust company”, or “financial corporation” are used that it does not concern financial activities. With respect to any violation of subsections (a) and (b) in this section, the Financial Institutions Commission of the Republic of Palau may:

- (1) fine the entity, person, board members, and executive officers (in the case of a corporation) up to five thousand dollars (\$5,000) per day such violation continues;
- (2) order the entity or person to cease and desist the offending activity;
and
- (3) if the entity is a Palau corporation, dissolve the legal entity.

(c) No bank shall use words in its title that are misleading concerning the bank’s financial condition, legal status, or indicating any connection with governmental or international institutions.

(d) No bank organized outside the Republic of Palau shall be permitted to engage directly in taking deposits in the Republic of Palau unless the activity is undertaken through a branch office or subsidiary for which a license has been issued by the Financial Institutions Commission of the Republic of Palau.

(e) No person shall make a misstatement of material fact or false representation or do anything to create a false appearance or engage in any manipulative device or practice in relation to taking of deposits.

(f) Banks as a class that are organized as credit unions under Chapter 7 of the Corporation Regulations of the Republic of Palau and whose total assets do not exceed five hundred thousand dollars (\$500,000) shall be exempt from the application of this chapter.

(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 twenty five thousand dollars (\$25,000). Corporate entities, other than the Republic of Palau, on whose behalf or for whose benefit a violation of this subsection 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 judgment in the press or by radio or television.

(h) Actions under either subsections (g) or (h) shall not prejudice any action taken by the Board pursuant to its powers under this chapter.

Source

RPPL 6-3 § 2[3], modified. Subsections (g) and (h) added by RPPL 7-27 § 4, modified. Subsections (a), (b), (d), and (f) amended by RPPL 7-41 § 2[3], modified.

Subchapter II

Financial Institutions Commission

§ 1011. Establishment.

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§ 1035. Standards of good administration.

§ 1011. Establishment.

(a) The Financial Institutions Commission of the Republic of Palau (hereinafter referred to as the "Commission") is hereby established as an independent regulatory agency with full capacity under the law of the Republic of Palau, and, in particular,

the capacity to contract, to incur liabilities, to acquire and to dispose of movable and immovable property, and to be a party to legal proceedings.

(b) Any and all confidential non-public documents provided and delivered to the Commission by any financial institution shall remain the property of the delivering financial institution, and these documents shall not constitute government documents within the meaning of the Constitution.

(c) The Commission shall have its head office at a location determined by the Executive Commissioner. The Commission may appoint agents at such locations in the Republic of Palau or abroad and with such functions and duties, as it shall determine.

(d) The Commission shall establish and have a seal, which shall include the name of the Commission.

Source

RPPL 6-3 § 2[4], modified.

§ 1012. General powers.

(a) The Commission shall exercise all powers specifically granted by this chapter and other applicable laws and regulations and such incidental powers as shall be reasonably necessary to carry out the powers so granted.

[Header A: **FINANCIAL INSTITUTIONS COMMISSION 26 PNCA § 1014**

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(b) The Commission is an independent agency of the Republic of Palau and shall enjoy operational independence and adequate resources to exercise its powers and fulfill its duties and obligations under this chapter and regulations promulgated hereunder. This independence shall be respected and no person shall seek improperly to influence any Commission Board member or employee in the discharge of his or her duties or to interfere in the activities of the Commission, except in the execution of a specific authority or duty under the law.

Source

RPPL 6-3 § 2[5], modified.

§ 1013. Objectives and basic tasks.

(a) The primary objective of the Commission shall be to ensure the liquidity and solvency of financial institutions in the Republic of Palau pursuant to the requirements of this chapter and any regulations promulgated hereunder.

(b) The Commission shall license, supervise, and regulate financial institutions, provided that nothing herein shall be construed to preempt or preclude other entities of the National Government, including, but not limited to, the Attorney General, the Registrar of Corporations, and the Bureau of Revenue, Customs and Taxation, from exercising authority over financial institutions pursuant to laws granting such authority to such entities.

Source

RPPL 6-3 § 2[6], modified. Subsection (b) amended by RPPL 7-41 § 2[6].

§ 1014. Cooperation with authorities.

(a) The Commission shall cooperate with public authorities in pursuing its objectives, and shall, in accordance with this chapter, take such actions as it deems necessary to promote such cooperation in the performance of its functions.

(b) The Commission shall provide general information as limited by the confidentiality and secrecy provisions of this chapter as requested from time to time by the Ministry of Finance or other agencies of the Republic of Palau as may be necessary for the performance of their duties.

[Header B: **26 PNCA § 1014 FINANCIAL INSTITUTIONS**

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Source

RPPL 6-3 § 2[7], modified. “Ministry of Finance” read “Ministry of Administration” in subsection (b) and was amended by RPPL 6-26 § 33. Subsection (b) amended by RPPL 7-41 § 2[7], modified.

§ 1015. International cooperation.

The Commission is the official agency for information as to the status of any entity licensed or claiming or purporting to be licensed by the Republic of Palau to act as a bank. The Commission is authorized to the extent set forth in this chapter and under Palau law to cooperate and exchange information with agencies of foreign governments and international agencies. The grant of a license under this chapter shall constitute consent of the financial institution to the release and exchange of information between the Commission and any law enforcement,

regulatory, or supervisory authorities of any foreign jurisdiction's government in which the financial institution may operate or otherwise conduct business.

Source

RPPL 6-3 § 2[8], modified. Amended in its entirety by RPPL 7-41 § 2[8], modified.

§ 1016. Communications with the Olbiil Era Kelulau and public.

The Commission shall inform the Olbiil Era Kelulau and the public on a regular and timely basis of its analysis of financial sector developments and on statistical information, including with respect to financial sector structure and payments.

Source

RPPL 6-3 § 2[9], modified.

§ 1017. Organization of the Commission.

The Commission shall have a Governing Board of Commissioners, and management consisting of an Executive Commissioner, and a staff.

Source

RPPL 6-3 § 2[10], modified.

§ 1018. Functions of the Governing Board.

[Header A: **FINANCIAL INSTITUTIONS COMMISSION 26 PNCA § 1019**

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(a) The Governing Board shall adopt policies for the operations of the Commission in accordance with this chapter and supervise their implementation. In carrying out its functions, the Governing Board must periodically assess the situation of financial institutions.

(b) The Executive Commissioner shall report not less than once every calendar quarter to the Commission on the administration and internal operations of the Commission, on the implementation of the Commission's supervisory and regulatory policies, and on all financial institutions' compliance with the chapter. The Executive Commissioner shall also report to the Commission all events and conditions that have or may be expected to have a significant effect on the administration or operations of the Commission and on the execution of its policies and on financial institutions.

Source

RPPL 6-3 § 2[11], modified.

§ 1019. Powers of the Governing Board.

(a) The Governing Board shall have the following powers:

- (1) to establish policies for financial institutions' supervision and regulation;
 - (2) to formulate and adopt the budget and the annual financial statements of the Commission and submit the same to the Olbiil Era Kelulau;
 - (3) to issue the annual report on the activities of the Commission to the President and the Olbiil Era Kelulau;
 - (4) to adopt the by-laws of the Commission and determine the policies applicable to the administration and operations of the Commission;
 - (5) to promulgate all regulations and adopt guidelines that are to be issued by the Commission;
 - (6) to review and approve or reject applications for licenses for financial institutions;
 - (7) to promulgate regulations to establish prudential requirements for financial institutions;
- [Header B: **26 PNCA § 1019 FINANCIAL INSTITUTIONS**
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- (8) to promulgate regulations to establish fees for licensing and for services rendered by the Commission;
 - (9) to adopt supervisory enforcement measures consisting of: conclusion of memoranda of understanding between the Commission and financial institutions' Boards of Directors; determination of the insolvency of a financial institution; or modification, suspension, or withdrawal of licenses of financial institutions;
 - (10) to approve all reports and recommendations that the Commission is to make to the Minister of Finance or to the Olbiil Era Kelulau;

(11) to decide on the Commission`s participation in international organizations;

(12) to promulgate staff regulations on the internal organization and job classification in the Commission and rules on the rights, duties, and obligations of the employees of the Commission;

(13) to appoint the Executive Commissioner and set his or her compensation and to engage auditors, attorneys, consultants, and other professional advisers;

(14) to take enforcement measures under subchapter VII, including ordering any financial institution to take remedial actions, or imposing penalties as provided in this chapter and any regulations promulgated hereunder; and

(15) to decide on all other matters which are by law under the jurisdiction of the Commission.

(b) The Executive Commissioner shall be responsible for the implementation of the decisions of the Governing Board of the Commission.

(c) All powers that are not specifically delegated to the Executive Commissioner shall be vested in the Governing Board. Within the limitation of his or her other powers, the Executive Commissioner shall have the authority to take all actions required or deemed advisable by him or her for the administration or operations of the Commission, including, without limitation: entering into contractual commitments on behalf of the Commission; and appointing the employees of the Commission.

(d) Notwithstanding the generality of subsection (c), the Executive Commissioner shall:

[Header A: **FINANCIAL INSTITUTIONS COMMISSION 26 PNCA § 1021**

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(1) manage the operations of the Commission;

(2) organize the functioning of the Commission;

(3) enact rules for the functioning and development of the information system of the Commission;

(4) commission periodic audits of the administration and operations of the Commission concerning compliance with the laws and regulations that apply to the Commission;

(5) commission an audit of the accounts and records and budgetary and accounting procedures and controls of the Commission;

(6) recommend to the Commission the appointment and removal from office of

[Header B: **26 PNCA § 1019 FINANCIAL INSTITUTIONS**

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Commission employees; and

(7) decide on other matters that are under the jurisdiction of the Executive Commissioner or when authorized by the Governing Board of the Commission.

Source

RPPL 6-3 § 2[12], modified. Subsection (a)(2) amended by RPPL 7-41 § 2[12].

§ 1020. Delegation of authority.

The Commission shall by regulation establish which duties the Executive Commissioner may assign to the staff.

Source

RPPL 6-3 § 2[13].

§ 1021. Composition of the Governing Board.

(a) The Governing Board of the Commission shall be composed of six (6) members, five (5) of whom shall be voting members.

(b) One Commission member shall be the president of the National Development Bank of Palau, ex officio; he or she shall be a non-voting member. Five (5) additional members of the Governing Board of the Commission shall be appointed by the President of the Republic of Palau. All appointments made by the President of the Republic shall be subject to the advice and consent of the Senate. All nominees for the Commission must hold a B.A./B.S. degree and have at least two (2) years of business management experience and have recognized civic leadership qualities. The President of the Republic of Palau shall not appoint a person that is related within the

second degree of consanguinity to the President. These members may not be an executive officer or principal shareholder in a financial institution and may not be related within the second degree of consanguinity to a person who is an executive officer or principal shareholder in a financial institution. The Governing Board shall elect a Chairman and a Vice Chairman from amongst its members.

[Header B: **26 PNCA § 1021 FINANCIAL INSTITUTIONS**

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(c) A member of the Commission may not be an officer, employee, agent, or paid consultant of a trade association representing the interests of banking or securities brokerage industries. A member of the Commission may not be related within the second degree of consanguinity to a person who is an officer, employee, agent, or paid consultant of a trade association representing the interests of the banking or securities brokerage industries.

(d) A majority of the appointed members of the Commission must be citizens of the Republic of Palau, to whom no ground for removal under § 1024 applies.

(e) All Commission members must be persons of recognized integrity, and no member shall be appointed who has: been convicted of a felony or crime of moral turpitude; been a member of a board of a financial institution that has previously been deemed capital insolvent; or have questionable integrity.

(f) The term of three (3) appointed members of the Commission shall be three (3) years and the term of the remaining two (2) appointed members shall be two (2) years. Commission members shall be eligible for reappointment, unless a ground for removal under § 1024 would apply to them.

(g) Whenever there is a vacancy on the Governing Board of the Commission, the President of the Republic of Palau shall appoint a new board member, in accordance with this section.

Source

RPPL 6-3 § 2[14], modified. Amended in its entirety by RPPL 7-41 § 2[14], modified.

§ 1022. Compensation of Executive Commissioner and members of the Commission.

[Header A: **FINANCIAL INSTITUTIONS COMMISSION 26 PNCA § 1024**

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The Executive Commissioner shall receive compensation as may be established by the Commission. Other members of the Commission shall receive compensation of thirty five dollars (\$35) per day on which Commission business is transacted.

Source

RPPL 6-3 § 2[15], modified.

§ 1023. Ineligibility to serve on the Commission.

No person shall serve on the Commission while he or she is a member of the Olbiil Era Kelulau, or the Council of Chiefs, or while serving as a cabinet member or as any other National or State Government official.

Source

RPPL 6-3 § 2[16], modified. RPPL 7-41 § 2[16] amended section 1023 only by capitalizing the first letters of “national” and “state government”.

§ 1024. Disqualification and removal of Commission members.

(a) A Commission member may be removed from office for cause only as set forth in this section upon a finding and recommendation by the President that the Commission member:

- (1) became ineligible to serve on the Commission pursuant to section 1023;
- (2) has been convicted of a felony or a crime of moral turpitude;
- (3) has become insolvent or has been declared bankrupt;
- (4) has, on grounds of personal misconduct, been disqualified or suspended by a competent authority from practicing a profession;
- (5) has engaged in serious violations of law or serious misconduct in the exercise of his or her office; or
- (6) has been absent from three or more successive meetings of the Commission without good and reasonable cause;
- (7) has suffered a final judgment for non-payment of a debt and has either not paid the judgment in full or is in arrears in payment under a court order;

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(8) has been an administrator of an entity that has been liquidated because of insolvency; or

(9) has been issued a final order finding the Commission member has violated one or more provisions of the Code of Ethics Act, RPPL No. 5-32.

Source

RPPL 6-3 § 2[17], modified.

§ 1025. Resignation of members of the Commission.

The Commission members may resign from office upon written notice to the President.

Source

RPPL 6-3 § 2[18], modified.

§ 1026. Vacancy on the Commission.

Any vacancy on the Governing Board shall be filled by the appointment of a new member of the Governing Board in accordance with section 1021 to serve the remaining period of the term of the Governing Board member replaced.

Source

RPPL 6-3 § 2[19], modified.

§ 1027. Meetings of the Commission.

(a) The Commission shall meet as often as the business of the Commission may require but not less frequently than once each calendar month.

(b) Special meetings of the Commission may be called by the Executive Commissioner. Meetings of the Commission may also be called at the written request of at least three (3) members of the Commission.

(c) The Commission shall establish rules for the conduct of its meetings, voting, minutes, and other procedural matters.

[Header A: **FINANCIAL INSTITUTIONS COMMISSION 26 PNCA § 1029**

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(d) Meetings shall be open to the public unless matters concerning business confidential information of financial institutions is being discussed. Meetings may be open to the public in part and closed in part.

(e) Three (3) voting members of the Commission shall constitute a quorum for the transaction of business.

(f) The Attorney General or his or her designee shall act as legal advisor to the Commission.

Source

RPPL 6-3 § 2[20], modified.

§ 1028. Preventing exploitation of conflicts of interest.

(a) Commission members and staff of the Commission shall be subject to the Code of Ethics Act, RPPL No. 5-32.

(b) The Commission shall within thirty days after its initial organizational meeting promulgate regulations governing recusal of its members in case of conflicts of interest.

Source

RPPL 6-3 § 2[21], modified.

§ 1029. Staff of the Commission.

(a) The Executive Commissioner may hire, or obtain through contract, such services as may be necessary to carry out the functions of the Executive Commissioner.

(b) The Commission shall adopt Commission staff regulations covering the conditions of employment at the Commission.

Source

RPPL 6-3 § 2[22], modified.

§ 1030. Employment; fiduciary duty.

[Header B: **26 PNCA § 1030 FINANCIAL INSTITUTIONS**

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(a) While holding office, the Executive Commissioner shall devote the whole of his or her professional services to the Commission and shall not occupy any other public office or employment.

(b) No member of the staff of the Commission shall simultaneously have other employment, whether gainful or not, without the prior written approval of the Commission.

(c) Commission members and staff of the Commission have a fiduciary duty to the Commission and to the institutions it regulates to place the Commission's interests and those institutions' interests before their own pecuniary interest.

Source

RPPL 6-3 § 2[23], modified.

§ 1031. Secrecy.

(a) No person who serves or has served as a member of the Commission or staff or as an auditor or agent of the Commission nor any other person shall, in a manner unauthorized by law: (1) permit access to, disclose or publicize nonpublic confidential information which was obtained in the performance of his or her duties for the Commission; or (2) use such information, or allow such information to be used, for personal gain.

(b) Upon the Commission's receipt of confidential information from financial institutions pursuant to this chapter, the Commission and all related employees and agencies shall be prohibited from disclosing or making known the existence of the information under review and under no circumstances may any person required to transmit confidential information or any other person having knowledge thereof communicate such confidential information to any natural or legal person other than a person serving as a member of the Commission or staff, or as an auditor or agent of the Commission, or as a technical advisor to the Commission, or in accordance with international agreements and obligations of the Republic of Palau.

(c) Notwithstanding subsections (a) and (b), such persons may disclose confidential material information outside the Commission, in accordance with procedures established by the Commission, but only if:

(1) in accordance with the prior express written consent of the person or financial institution to whom the information relates; or

[Header A: **FINANCIAL INSTITUTIONS COMMISSION 26 PNCA § 1032**

(2) as required by law or on the order of a court of competent judicial authority.

(d) Members of the Financial Institutions Commission and staff of the Commission shall execute an oath of secrecy in accordance with this section. Upon a finding by a court of competent jurisdiction that this oath has been violated, the violator shall be dismissed from office. The violator shall be subject to a fine not exceeding fifty thousand dollars (\$50,000) or imprisonment for a period not exceeding ten (10) years, or both, upon a finding by a court of competent jurisdiction that a person has violated the oath.

Source

RPPL 6-3 § 2[24], modified. Subsections (b) and (d) amended by RPPL 7-41 § 2[24], modified.

§ 1032. Prohibited activities.

(a) Except as otherwise specifically authorized by this chapter, the Commission shall not:

(1) grant any credit or make any gift;

(2) engage in commerce, purchase the shares of any business entity, including the shares of any financial institution, or otherwise have an ownership interest in any financial, commercial, agricultural, industrial, or other undertaking; or

(3) acquire by purchase, lease, or otherwise any real rights in or to immovable property, except as it shall consider necessary or expedient for the provision of premises for the conduct of its administration and operations incidental to the performance of its functions under the provisions of this chapter.

Source

RPPL 6-3 § 2[25], modified.

§ 1033. Collection of statistical information.

[Header B: **26 PNCA § 1033 FINANCIAL INSTITUTIONS**

]

(a) The Commission shall collect statistics and related information required to fulfill its duties and responsibilities under this chapter and regulations promulgated hereunder. To that end, it shall cooperate with the competent authorities from outside the Republic of Palau and with international organizations as required by Palau law.

(b) The Commission shall define by regulation the statistics and information so required, the form in which such information is to be provided to the Commission, and the persons that are to provide such information to the Commission.

Source

RPPL 6-3 § 2[26], modified. The words “of Palau” were added to subsection (a) by RPPL 7-41 § 2[26], modified.

§ 1034. Regulations, reporting.

Except as otherwise provided herein, all proposed rules and regulations under this chapter shall be promulgated pursuant to the Administrative Procedure Act, 6 PNCA Chapter 1.

Source

RPPL 6-3 § 2[27], modified. Amended by RPPL 7-41 § 2[27], modified.

§ 1035. Standards of good administration.

(a) The Commission shall use the powers given it under this chapter equitably and uniformly and in accordance with sound administrative practices. It shall refrain from using any such power to serve an objective for which the power was not given or in excess of what shall be required to achieve the objective for which the power was given.

(b) The decisions of the Commission taken pursuant to this chapter shall be impartial and shall be motivated only by objective and rational considerations; they shall be executed with fairness and restraint.

(c) The Commission may not grant waivers of exception from compliance with this chapter or regulations issued thereunder, except as provided in § 1074(c).

(d) The Commission shall supervise and regulate, as provided in this chapter, all financial institutions and shall enforce the provisions of this chapter through the Executive Commissioner or through staff, employees or agents of the Commission. The Executive Commissioner, each member of the Governing Board of the Commission, and each staff member, employee or agent of the Commission shall not be personally liable for damages occasioned by official acts or omissions except

when such acts or omissions are arbitrary, capricious, and done with malice. The Attorney General, or his or her designee, shall defend any action brought against the Executive Commissioner, any member of the Governing Board of the Commission, or any staff member, employee or agent of the Commission by reason of his or her official act or omission, whether or not at the time of the institution of the action the defendant has terminated his or her service with the Commission.

[Header A: **FINANCIAL INSTITUTIONS COMMISSION 26 PNCA § 1041**

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Source

RPPL 6-3 § 2[28], modified. Subsection (c) amended and subsection (d) added by RPPL 7-41 § 2[28], modified.

Subchapter III

Licensing

§ 1041. Licensing authority of the Commission.

§ 1042. Licensing of existing financial institutions.

§ 1043. Minimum capital.

§ 1044. License application.

§ 1045. License decision.

§ 1046. Scope of license; fees.

§ 1047. Register of financial institutions.

§ 1048. Modification, suspension, or revocation of a license.

§ 1049. Publication and effect of license revocation.

§ 1041. Licensing authority of the Commission.

The Commission shall have sole responsibility for the issuance of licenses to financial institutions.

Source

RPPL 6-3 § 2[29], modified.

§ 1042. Licensing of existing financial institutions.

[Header B: **26 PNCA § 1042 FINANCIAL INSTITUTIONS**

]

(a) All banks existing and operating in the Republic of Palau as of the effective date of this chapter shall be and are licensed to engage in all of the financial activities listed in

§ 1073. Existing and operating securities brokers and securities dealers are licensed to engage in the financial activities listed in § 1073 (a)(15), (16), and (17) only.

(b) (1) The institutions referred to in subsection (a) shall present and deliver to the Commission the following documents within one hundred eighty (180) days of the effective date of this chapter:

(A) a copy of the financial institution's corporate charter or the equivalent;

(B) an original certificate of good standing from the Registrar of Corporations;

(C) if applicable under law in effect prior to the effective date of this chapter, a copy of a Foreign Investment Approval Certificate;

(D) copies of the institution's current national and state business licenses;

(E) certification of good standing from the corporate registrar or equivalent agency of the jurisdiction in which the foreign corporation is domiciled;

(F) affidavit of a duly authorized officer of the financial institution, under penalty of perjury, that the license of the financial institution is valid and not under suspension or cancellation by the jurisdiction in which the foreign corporation is domiciled; and

(G) a license fee of five thousand dollars (\$5,000).

(2) Failure to submit the documents listed in subsection (b)(1) will result in the automatic suspension without notice of the financial institution's license to operate in any capacity covered by this chapter until all documents have been submitted to the Commission. If within one hundred eighty (180) days of the effective date of this chapter an existing financial institution has not submitted the documents listed in subsection (b)(1), the institution will be regarded as unlicensed and must apply for a license pursuant to this chapter.

[Footer A: Supp. 7 26 - 51]

(c) Existing financial institutions in the Republic of Palau licensed under this section which have loans on their books as of the effective date of this chapter which do not conform to the requirements of this chapter are exempt from the requirements of this chapter as to such loans for the balance of the original term of such loans. Notwithstanding the foregoing, no extension of loan term shall be made or new credit extended in relation to such non-conforming loans.

[Header A: LICENSING 26 PNCA § 1043

]

(d) Existing financial institutions in the Republic of Palau licensed under this section shall annually pay a non-resident worker's fee of five hundred dollars (\$500) to the Republic of Palau for each non-resident worker employed.

Source

RPPL 6-3 § 2[30], modified. RPPL 7-41 § 2[30] amends subsection (a); repeals sections (c) & (e); amends & re-lettered sections (d) & (f) to (c) & (d) to follow code format, modified.

Notes

The phrase "referred to in" in subsection (b)(1) reads "referred in to" in RPPL 6-3 § 2[30]. The term "effective date of this chapter" in subsection (a) has become February 13, 2008, the date that RPPL 7-41 was approved by President Remengesau. The former version of subsection (a) in RPPL 6-3 § 2[30] read: "All banks existing and operating in Palau as of the effective date of this Act shall be and are licensed to engage in all of the financial activities listed in section 51.

Existing and operating securities brokers and securities dealers are licensed to engage in financial activities listed in section 51(a)(15), (16), (17) only." Section 51 has become section 52 in RPPL 7-41.

§ 1043. Minimum capital.

(a) Financial institutions not existing or doing business in the Republic of Palau or licensed to do business in the Republic of Palau as of the effective date of this chapter shall apply for a new license under this chapter.

(b) The minimum capital required for financial institutions to qualify for a license after the effective date of this chapter is as follows:

(1) For one hundred percent (100%) Palauan owned banks, the amount of minimum capital shall not be less than five hundred thousand dollars (\$500,000); all other banks shall have minimum capital of not less than one million dollars (\$1,000,000).

(2) For foreign bank subsidiaries in the Republic of Palau, the amount may not be less than two million dollars (\$2,000,000).

[Footer B: Supp. 7 26 - 52]

(3) For a foreign bank branch or subsidiary in the Republic of Palau, the amount of minimum capital of the parent bank and all subsidiaries may not be less than seventy-five million dollars (\$75,000,000), except for those foreign bank branches or subsidiaries that are already licensed in Palau at the effective date of this chapter, provided that such institution remains in good standing with the United States Federal Deposit Insurance Corporation (FDIC) or, where such institution is not governed by the rules of the FDIC, such institution remains in good standing with its primary home country supervisor and maintains depositor insurance in accordance with its home country government sponsored insurance program.

[Header B: **26 PNCA § 1043 FINANCIAL INSTITUTIONS**

]

(4) For securities brokers and securities dealers, the minimum capital may not be less than one hundred thousand dollars (\$100,000).

(5) Provided, the Commission may, by regulation, increase the minimum capital amounts prescribed above for the licensing of a financial institution to such level as may be necessary to promote and assure the safety and soundness of the financial institution and the protection of depositors' and creditors' interests.

Source

RPPL 6-3 § 2[31], modified. Amended by RPPL 7-41 § 2[31], modified. Subsection (b)(2) is amended by RPPL 8- 28 § 3.

§ 1044. License application.

(a) For financial institutions that cannot be licensed under section 1042, licenses shall be applied for in writing to the Commission and shall be accompanied by the following basic information with supporting documentation:

(1) the qualifications and experience of the proposed administrators at the Palau branch or office, including business or professional history for the past ten (10) years;

(2) the amount of the proposed capital of the financial institution and the amount that may have previously been paid in or subscribed to; provided, that no capital may be contributed in kind;

(3) a business plan setting out, inter alia, the organizational structure, the types of financial activities envisaged, and projected financial statements for three (3) years;

(4) the name, residence, business or professional history for the past ten (10) years and financial statements for the past three (3) years of each person who proposes to be a principal shareholder, and the amount and percentage of shares held; for the purposes of this subsection, the proposed ownership interest of affiliated persons shall be aggregated to determine the amount of the proposed ownership interest; for shareholders who are natural persons with more than a significant interest in the applicant and for the applicant's chief operating officer, the following documents shall be submitted:

[Header A: **LICENSING 26 PNCA § 1044**

]

(A) a copy of the shareholder's passport,

(B) police clearance from the shareholder's place of habitual physical residence, and

(C) a copy of the shareholder's curriculum vitae and personal financial statements; shareholders who are corporations with more than a significant interest in the applicant shall submit certified copies of each such shareholder's most recent bank statement for all bank accounts and the balance sheet and profit and loss statement for the fiscal year most recently ended.

(b) The Commission may request an applicant to submit reasonably necessary additional or supplemental information for its license application if, in the opinion of the Commission, the basic information submitted is incomplete or insufficient.

(c) The license concerning a branch office or subsidiary of a financial institution organized under the law of another jurisdiction (hereinafter referred to as a "foreign financial institution" or, for banks, "foreign bank") shall be applied for by the foreign financial institution. The application for such license shall be accompanied by such information, in addition to the information required by subsection (a), as the Commission shall prescribe by regulation.

(d) No Palau financial institution shall establish or license a subsidiary, branch office, or other facility outside the Republic of Palau without the prior written consent and approval of the Commission.

Source

RPPL 6-3 § 2[32], modified. Subsection (d) added by RPPL 7-41 § 2[32].

§ 1045. License decision.

[Header B: **26 PNCA § 1045 FINANCIAL INSTITUTIONS**

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(a) Within two (2) months from the date of its receipt of an application for a license that has been completed to the satisfaction of the Commission, or its receipt of correspondence regarding the status of or a question about the application for a license, the Commission shall approve or deny the application and notify the applicant of its decision, or respond to the correspondence or question, in writing; decisions denying a license application shall include an explanation of the grounds on which the license was denied and shall not be subject to appeal under the Administrative Procedure Act, 6 PNCA Chapter 1, or this chapter.

(1) The grounds for denial of an application may include that the information submitted by the applicant is, in the opinion of the Commission, insufficient to determine whether the applicant meets the criteria for approval of an application, with specific reference to the information deemed to be insufficient.

(2) The Commission shall grant a license only if it is satisfied that:

(A) the business plan is based on reasonable assumptions and demonstrates that the financial institution will become profitable within a reasonable period of time;

(B) the financial institution will comply with all provisions of this chapter; and

(C) the qualifications, experience, and integrity of its administrators and significant shareholders and the capitalization are appropriate for its business plan and for the financial activities that the financial institution will be licensed to engage in.

(b) In approving an application for a license, the Commission may impose conditions to be satisfied by the licensee prior to the commencement of business, including:

(1) the payment by shareholders of initial capital funds;

(2) a condition that the licensee carry on business at a designated place or places unless the prior written approval of the Commission is obtained;

(3) the types of services or products to be provided;

(4) registration with the Tax Office; or

(5) any other reasonable condition that the Commission deems necessary and appropriate to the licensee.

(c) The Commission shall revoke the license of a financial institution if the licensee fails to commence operations within a period of six months following the grant of a license.

[Header A: **LICENSING 26 PNCA § 1045**

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(d) Before revoking the license of any financial institution under subsection (c), the Commission shall give the financial institution written notice of its intention to do so, and shall afford the financial institution a reasonable opportunity to show cause at a meeting of the Commission with a quorum present why such license should not be revoked; provided that in no event shall a license be revoked earlier than twenty-eight days after the notice of intention is served on the financial institution. The Commission shall consider any representations made by the financial institution and shall issue its decision in writing, with specific grounds for its decision. Any decision of the Commission shall be based on good cause shown and shall not be subject to appeal under the Administrative Procedure Act, 6 PNCA Chapter 1, or this chapter.

(e) Licenses concerning a subsidiary or branch office of a foreign bank shall be granted only if:

(1) the foreign bank is authorized to engage in the business of receiving money deposits or other repayable funds in the jurisdiction or foreign country where its head office is located;

(2) the competent authorities that supervise the financial activities at the head office of the foreign bank concerned have given their written consent to the granting of such license; and

(3) the Commission determines that the foreign bank is adequately supervised on a consolidated basis by its supervisory authorities.

(f) Branches of foreign banks shall maintain minimum capital in the amount of two million dollars (\$2,000,000) in the Republic of Palau or provide the Commission with written proof that the foreign bank's deposits are insured in accordance with a government sponsored depository insurance program.

Source

RPPL 6-3 § 2[33], modified. Subsections (a), (b), (c), (d), and (f) amended by RPPL 7-41 § 2[33], modified. Subsection (f) is amended by RPPL 8-28 § 2.

§ 1046. Scope of license; fees.

[Header B: **26 PNCA § 1045 FINANCIAL INSTITUTIONS**

]

(a) A license shall be granted for an indefinite period of time and shall not be transferable.

(b) The Commission may charge fees on account of: the initial processing of a license application in the amount of two thousand five hundred dollars (\$2,500); and the issuance of any preliminary approval for a license. Such fees shall not be refunded in case a license application is denied, a financial institution does not commence business or ceases operations, or the license is revoked pursuant to § 1048.

(c) Financial institutions licensed under §§ 1042, 1043, 1044, 1045, and 1046 shall annually pay to the Republic of Palau a non-resident worker's fee of five hundred dollars (\$500) for each non-resident worker employed.

Source

RPPL 6-3 § 2[34], modified. Subsection (b) amended by RPPL 7-41 § 2[34], modified.

§ 1047. Register of financial institutions.

(a) A central register shall be kept by the Commission for examination by the public that shall record for each licensed financial institution the name, the head office and branch office addresses, and current copies of the institution's charter and by-laws.

(b) Documents concerning former financial institutions whose licenses have been revoked may be removed from the register after one (1) year. A list of financial institutions whose licenses have been revoked shall be maintained in the register indefinitely.

Source

RPPL 6-3 § 2[35], modified.

[Footer A: Supp. 6 26 - 57]

§ 1048. Modification, suspension, or revocation of a license.

[Header A: **LICENSING 26 PNCA § 1048**

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(a) The Commission may, after notice and a hearing, modify, suspend, or revoke a license on one or more of the following grounds:

[Header A: **LICENSING 26 PNCA § 1048**

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(1) the license has been obtained on the basis of false information submitted by or concerning the applicant, including regarding the qualifications, experience or integrity of its proposed administrators and significant shareholders' financial condition, or other material irregularities that occurred in connection with the license application;

(2) the financial institution has exceeded the terms of its license or failed to comply with any condition imposed on its license;

(3) another financial institution that holds a significant interest in the financial institution has had its license revoked;

(4) a merger, amalgamation, or sale of substantially all the assets of the financial institution has occurred without prior approval of the Commission;

(5) the owner or owners of the financial institution have decided to dissolve or to liquidate the financial institution, or the financial institution has ceased to exist as a legally or operationally independent entity; or

(6) the financial institution has knowingly submitted to the Commission false material information concerning its financial condition and upon notice of the error or omission fails to correct same within a reasonable time after discovery.

(b) Before any action is taken under subsection (a), the Commission shall give a financial institution written notice of its intentions to do so, and shall afford the financial institution a reasonable opportunity to show cause at a meeting of the Commission with a quorum present why such action should not be taken. The Commission shall consider any representations made by the financial institution and shall issue its decision in writing, with specific grounds for its decision. Any decision of the Commission shall be based on good cause shown. A decision by the Commission shall be final and not subject to appeal under the Administrative Procedure Act, 6 PNCA Chapter 1. However, the financial institution may, within forty-five (45) days after the date of the action taken by the Commission under subsection (a), make a written request to the Commission for a rehearing on the matter. Such rehearing shall commence within forty-five (45) working days of the request, provided that a quorum of the Commission is in Palau during that

[Footer B: Supp. 6 26 - 58]

time period, or as soon as practicable after a quorum is present in Palau. If the Commission refuses to change its decision during the rehearing, the financial institution may then appeal the decision within forty-five (45) days to the Trial Division of the Palau Supreme Court. Within sixty (60) days after the appeal has been filed, the Palau Supreme Court shall hold a hearing to determine if there is any reasonable ground to uphold the decision of the Commission. If the decision of the Commission is determined to be reasonable, the decision shall be final and no further appeals shall be allowed. Neither party shall be permitted to engage in pretrial discovery regarding this matter and the action shall not adjudicate any issues other than the decision of the Commission. Pending the final adjudication of any appeal, the decision of the Commission shall remain in effect.

[Header B: **26 PNCA § 1048 FINANCIAL INSTITUTIONS**

]

(c) When a financial institution requests that the Commission revoke its license, the Commission shall decide on the request within fifteen (15) days after its receipt.

(d) The license issued to a foreign bank concerning one or more branch offices must be revoked by the Commission if the foreign bank does not have the authority, or has

lost the authority, to engage in the business of receiving money deposits or other repayable funds in the foreign country where its head office is located.

Source

RPPL 6-3 § 2[36], modified. Subsections (a)(2), (a)(6), and (b) amended by RPPL 7-41 § 2[36], modified.

§ 1049. Publication and effect of license revocation.

(a) The final decision to revoke a license shall immediately be published in one or more newspapers of general circulation in the Republic of Palau and such other publications as may be deemed appropriate by the Commission; the decision to revoke a license shall become effective on the date of such publication or on such later date as the decision shall specify.

(b) During the winding up of its affairs, the financial institution shall otherwise continue to be subject to the supervision and regulation of the Commission, as if it were licensed.

Source

RPPL 6-3 § 2[37], modified. Subsection (a) amended by RPPL 7-41 § 2[37].

Subchapter IV

Organization and Administration

§ 1051. Organization and independence.

[Header A: **ORGANIZATION AND ADMINISTRATION 26 PNCA § 1051**

|

§ 1052. Management, books of account, and identity of banks organized in the Republic of Palau.

§ 1053. Restrictions on ownership and holdings.

§ 1054. Mergers, etc.

§ 1055. Charter and by-laws.

§ 1056. Administrative structure of financial institutions.

§ 1057. Quality of administrators.

§ 1058. Disqualification and removal.

§ 1059. Committees.

§ 1060. Secrecy.

§ 1061. Prevention of money laundering.

§ 1062. Reporting of suspicious transactions and compliance with money laundering and counter terrorism financing standards.

§ 1063. Disclosure of conflicts of interest; fiduciary obligations.

§ 1051. Organization and independence.

(a) Palau financial institutions shall be organized as corporations under 12 PNCA Chapter 1, with shares registered in the name of the beneficial owner. The provisions of 12 PNCA Chapter 1 shall apply to financial institutions to the extent not inconsistent with this chapter; in particular, the minimum required capital must be fully paid in, in accordance with section 1043(b) of this chapter.

(b) Branches of foreign banks shall have a board of directors and committees, as prescribed in sections 1055-1059, as if the branch were a locally-organized corporation. Notwithstanding the foregoing, a branch of a foreign financial institution shall be exempt from this requirement upon submitting a written certification to the Commission that such foreign financial institution has a board of directors and committees performing substantially similar functions as those prescribed in sections 1055-1059.

(c) Each financial institution shall enjoy legal, operational, financial and administrative autonomy from any other person, including the Commission and any agency or political subdivision of the government, unless the law, this chapter, rules or regulations, or orders issued pursuant thereto specifically otherwise provide. This autonomy shall be respected and no person shall seek improperly to influence any administrator of a financial institution in the discharge of his or her duties or to interfere in the activities of any financial institution, except in the execution of a specific authority or duty under the law. Notwithstanding the foregoing, nothing in this chapter shall be construed to limit or prevent the relevant supervisory and regulatory bodies, including, but not limited to, the Commission, the Attorney General, the Registrar of Corporations, and the Bureau of Revenue, Customs and Taxation, from exercising their respective supervisory, regulatory, or investigative powers over the operations of financial institutions.

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Source

RPPL 6-3 § 2[38], modified. Subsections (a) and (c) amended by RPPL 7-41 § 2[38], modified.

§ 1052. Management, books of account, and identity of banks organized in the Republic of Palau.

(a) A bank organized in the Republic of Palau must have a manager in the Republic of Palau who has authority to engage the financial responsibility of the bank and, for banks with assets of more than five hundred thousand dollars (\$500,000), who works in the bank full time in the Republic of Palau.

(b) A Republic of Palau bank's books of account, including a daily ledger, must be kept in the Republic of Palau

(c) A Republic of Palau bank must trade only in the name designated in its license.

Source

RPPL 6-3 § 2[39], modified. Subsections (a) and (b) amended by RPPL 7-41 § 2[39], modified.

§ 1053. Restrictions on ownership and holdings.

(a) To have legal effect, the transfer, stemming out of a single transaction or a series of related transactions, of an equity interest in a financial institution licensed in the Republic of Palau shall require the prior written authorization of the Commission if, as a result of such transfer, any one person or number of related persons acting in concert would, directly or indirectly, hold at least twenty percent (20%) interest or a controlling interest in such financial institution. In the event that transfer is for an interest of less than twenty percent (20%), or if it is less than a controlling interest, prior to the transfer, the seller or transferor shall notify the Commission of the proposed sale or transfer and provide such information about the sale or transfer, and the prospective purchaser or transferee, as may be reasonably required by the Commission. Once notice of the proposed sale or transfer has been provided to the Commission, the Commission shall, within forty-five (45) days, either approve the sale or transfer, deny the sale or transfer, or request further information regarding the sale or transfer or proposed purchaser or transferee. If the Commission takes no action within forty-five (45) days, the sale or transfer shall be deemed approved. Any transfer of less than five percent (5%) in a financial institution whose shares are publicly traded on a stock exchange acceptable to the Commission shall be exempt from this requirement of prior Commission notification. Decisions shall be based upon whether, in the determination of the Commission, the qualifications, experience, and integrity of the proposed shareholders are appropriate for their

significant ownership of the financial institution. Any authorization by the Commission to approve the transfer shall not be unreasonably withheld.

[Header A: **ORGANIZATION AND ADMINISTRATION 26 PNCA § 1054**

]

(b) No Palau bank shall, alone or in concert with one or more other persons, directly or indirectly: (1) hold an equity interest in a person or undertaking that is engaged in other than financial activities that either represents a significant interest or exceeds as to its net current value the equivalent of twenty percent (20%) of the bank's capital; or (2) permit the aggregate net current value of all such equity interests to exceed the equivalent of fifty percent (50%).

(c) No such authorization under subsection (b) shall be required for:

(1) equity interests that have been acquired in lieu of repayment of credit granted by the bank, in which case the bank shall entirely dispose of such equity interests within one (1) year from the date they are acquired or within such longer time period as the Commission may decide, not exceeding two (2) years; or

(2) equity interests held as an agent.

Source

RPPL 6-3 § 2[40], modified. Subsection (a) amended by RPPL 7-41 § 2[40]. Subsection (b) amended by RPPL 7-44 § 1, modified.

§ 1054. Mergers, etc.

To have legal effect, the acquisition, merger, amalgamation or sale of substantially all the assets of a Palau financial institution shall require the prior written authorization of the Commission. Determinations shall be based upon whether the proposed transaction would result in the substantial lessening of competition and on the criteria described in section 1045(a)(2), as if the determination were for the issuance of an initial license. Such authorization shall not be unreasonably withheld by the Commission.

[Header B: **26 PNCA § 1054 FINANCIAL INSTITUTIONS**

]

Source

RPPL 6-3 § 2[41], modified.

§ 1055. Charter and by-laws.

(a) Each Palau financial institution, except branches of foreign banks, shall have a charter that shall specify its corporate name and address, its purposes, the amount of its capital, the classes and number of its shares, and the voting rights attaching to its shares. No amendment of the charter or articles of incorporation of a bank shall take effect without the prior written consent of the Commission.

(b) Each Palau financial institution shall be governed by internal by-laws, approved by its board of directors, which in compliance with its charter and articles of incorporation shall establish:

(1) the structure of its organization and administration, including its operational and administrative units, their sub-units and functions, supervisory positions, and reporting relationships;

(2) the duties of each departmental director and the units under his or her direction and supervision;

(3) the functions of its permanent committees;

(4) the limits of the authority of the administrators and other employees of the financial institution to engage in financial activities for the account of the financial institution.

(c) Each financial institution shall maintain on file with the Commission a duly certified copy of its charter, its articles of incorporation, and its by-laws, and a certificate of good standing for the financial institution from its jurisdiction of incorporation.

Source

RPPL 6-3 § 2[42], modified.

§ 1056. Administrative structure of financial institutions.

(a) The board of directors of a Palau financial institution shall be responsible for establishing the policies for the operations of the financial institution and for supervision of their implementation.

(b) Each Palau financial institution shall have an Audit Committee. Each Palau bank shall also have a Risk Management Committee or separate Credit and Asset and Liability Management Committees.

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(c) The board of directors of a Palau bank shall have an uneven number of not less than five (5) nor more than nine (9) members. A majority of board members must not work as administrators of the Palau bank. Board members of a Palau bank shall be appointed by the general meeting of shareholders of the Palau bank for a period of not more than four (4) years; they may be re-appointed for subsequent periods.

(d) The board of directors of a bank and its members cannot delegate their responsibilities to others.

Source

RPPL 6-3 § 2[43], modified.

§ 1057. Quality of administrators.

All persons elected or appointed as administrators of a financial institution must be of good repute and must meet the criteria established by regulation of the Commission regarding qualifications, experience, and integrity.

Source

RPPL 6-3 § 2[44], modified.

§ 1058. Disqualification and removal.

(a) A person shall not be eligible to become a member of the board of directors of a Palau financial institution, or shall by decision of the general or special meeting of shareholders of the financial institution be relieved of his or her membership on the board of directors, or, if it fails to act within thirty (30) days of notice of the disqualification, by the Commission, in the event that:

(1) he or she has by law been deprived by a court or regulatory body of competent jurisdiction of the right to sit on the governing body of a corporation or other legal person;

(2) he or she serves, or he or she served at any time during the immediately preceding twelve (12) month period, on the administrative body of the Commission;

(3) he or she has been convicted of a felony or a crime of moral turpitude;

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(4) the Commission determines that he or she has been a party to a transaction that violates this chapter; or

(5) he or she has suffered a final judgment for non-payment of a debt which has not been paid in full or is in arrears of payment under a court order or has been an administrator of an entity that has been liquidated because of insolvency.

(b) Members of the board of directors of a Palau bank, except those who have filed a written objection against the proposed credits, shall be jointly and severally liable for losses sustained by a bank from credit extended in violation of section 1074(a)(2). Such liability may not be paid directly or indirectly by the Palau bank which they serve or by the proceeds of any professional liability insurance or other indemnity policy.

(c) A natural person who is a principal shareholder of a Palau financial institution or a principal shareholder of a person that is an affiliate of a Palau financial institution and who is described in subsections (a)(1)–(5) shall divest his or her interest in voting shares of the Palau financial institution to below the level of a principal shareholder or the affiliate of a Palau financial institution shall divest its interest in voting shares of the Palau financial institution to below the level of a principal shareholder. If he or she or the affiliate fails to do so within sixty (60) days of his or her becoming disqualified, his or her or the affiliate's shares in the Palau financial institution shall lose the right to vote and to receive a capital distribution. After such period, if the divestiture is not accomplished, the Commission may order that all the shares in the Palau financial institution held by the principal shareholder or affiliate of the Palau financial institution be transferred to a receiver for sale at auction and the net proceeds, less expenses of sale, will be remitted to the disqualified shareholder or affiliate.

Source

RPPL 6-3 § 2[45], modified. Subsection (b) reference to 1074 (a)(2) was amended by RPPL 7-41 § 2[45].

§ 1059. Committees.

(a) Each Palau financial institution shall establish an Audit Committee that shall consist of three (3) members appointed by the board of directors of the Palau financial institution for periods not to exceed two (2) years. A person shall not be eligible to serve on the Audit Committee if he or she is described in section 1058(a)(1)–(5). The Audit Committee shall:

[Header A: **ORGANIZATION AND ADMINISTRATION 26 PNCA § 1059**

]

(1) establish appropriate accounting procedures and accounting controls, supervise compliance with such procedures, and recommend to a general meeting of the board of directors the appointment of internal or external auditors;

(2) monitor compliance with this chapter and laws and regulations applicable to the Palau financial institution and report to the board of directors thereon;

(3) make recommendations to the Palau financial institution's board of directors to engage experts at the expense of the Palau financial institution to assist in the fulfillment of the committee's responsibilities; and

(4) deliver opinions on any matters submitted to it by the board of directors or that it wishes to address.

(b) The Audit Committee shall meet at least once per quarter. Decisions shall be taken by a majority of the members present and no abstentions shall be allowed unless the member has a conflict of interest. Minutes of meetings shall be recorded.

(c) Each Palau bank shall establish a Risk Management Committee that shall consist of three (3) members of the board of directors who shall serve for a term not to exceed two (2) years which term shall be renewable. The Risk Management Committee shall:

(1) establish and monitor implementation of policies and procedures for the bank for credit appraisal, loan administration, and asset and liability management, including such matters as underwriting standards, approval of large extensions of credit and all equity investments, requirements for collateral for credit, classification of and provisioning for value-impaired assets, pursuit of borrowers and issuers in default, and managing interest rate, market, and country risk;

(2) monitor compliance with the laws and regulations applicable to credit and other risks and report to the board of directors thereon; and

(3) deliver opinions on any matters submitted to it by the board of directors or that it wishes to address.

(d) The Risk Management Committee shall meet at least once per month. Decisions shall be taken by a majority of the members present and no abstentions shall be allowed unless a member has a conflict of interest.

[Header B: **26 PNCA § 1059 FINANCIAL INSTITUTIONS**

]

(e) Palau banks may establish separate Credit and Asset and Liability Management Committees to perform the functions described in subsection (c).

Source

RPPL 6-3 § 2[46], modified.

§ 1060. Secrecy.

(a) Present and past administrators, employees, and agents of a financial institution shall keep secret, and not to use for personal gain or gain by other than the financial institution that they serve or have served, or permit to be examined by others, any non-public information that they obtained in the course of their services to the financial institution.

(b) The information described in subsection (a) may be disclosed where required by law to the Commission, including the auditors appointed by it, and when the protection of the financial institution's own interest in legal proceedings requires disclosure.

Source

RPPL 6-3 § 2[47], modified.

§ 1061. Prevention of money laundering.

(a) No financial institution shall conceal, convert, or transfer cash or other property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illegal origin of the property or shall knowingly assist any person who is involved in such activity to evade the legal consequences of his or her action.

(b) The knowledge described in subsection (a) may be inferred from objective factual circumstances.

Source

RPPL 6-3 § 2[48], modified.

§ 1062. Reporting of suspicious transactions and compliance with money laundering and counter terrorism financing standards.

]

(a) A financial institution shall not carry out a transaction that appears to have an unlawful purpose or it suspects to be related to a serious criminal activity until it submits a confidential written report regarding the transaction that provides information as to the origin and destination of the money, the purpose of the transaction, and the identity of the transacting parties to the Financial Institutions Commission (FIC) and the Financial Intelligence Unit (FIU). The FIU may give instructions not to execute the transaction. Where a transaction is suspected to be related to a serious criminal activity and where a delay in carrying out the transaction is impossible or is likely to frustrate efforts to pursue the beneficiaries of such transaction, the financial institution shall inform the FIC and the FIU in writing immediately afterwards. For purposes of this section, "serious criminal activity" includes any felony or other crimes of moral turpitude and such other activities as the FIU may determine by regulation. The FIC shall regularly examine all financial institutions Anti-Money Laundering and Counter Financing of Terrorism (hereinafter "AMLCFT") procedures and reporting standards. Such examinations may, in the sole discretion of the FIC, be conducted as an on-site or off- site examination, or both. Any additional costs resulting from the examination shall be borne by the financial institution. In the event that a financial institution's AMLCFT procedures and reporting has been assessed either by a private entity acceptable to the FIC , or by a governmental entity acceptable to the FIC, the FIC may accept such report in lieu of its report.

(b) With regard to any information provided to or requested by the FIU or the FIC for the purposes of complying with the Money Laundering and Proceeds of Crime Act (MLPCA) or any money laundering or financing of terrorism law of the Republic of Palau, or information disclosed in relation to a suspicious transaction, a financial institution shall not disclose to any person, other than a court or other person authorized by law, that information has been transmitted to or requested by the Commission, the FIU or other authorities, that an investigation is being carried out, or that instructions not to execute a transaction are being carried out.

(c) When a financial institution provides information that is referred to in subsection (b) in good faith, the financial institution shall be exempted from liability of any kind for complying with this section and/or for breach of any restriction on disclosure of information, except as provided in subsection (b), regardless of the result of the communication.

(d) For the purposes of this section, "financial institution" includes the administrators, employees, and shareholders of a financial institution.

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Source

RPPL 7-41 § 2[49], modified.

Notes

A new section 49 “Reporting of suspicious transactions and compliance with money laundering and counter terrorism financing standards” (codified as § 1062) was added by RPPL 7-41 § 2[49] and the former section 49 “Disclosure of conflicts of interest; fiduciary obligations, RPPL 6-3 § 2[49]” became section 50 (codified as § 1063).

“Money Laundering and Proceeds of Crime Act” in subsection (b) read “MLPCA” in the original legislation RPPL 7-41 § 2.

§ 1063. Disclosure of conflicts of interest; fiduciary obligations.

[Header A: **ORGANIZATION AND ADMINISTRATION 26 PNCA § 1062**

]

(a) An administrator of a Palau bank who is a party to a material contract or a proposed material contract with the bank or is an administrator of, or has a material interest in or a material relation to any person who is a party to a material contract or a proposed material contract with the bank, shall disclose in writing to the bank the nature and extent of the material interest or relation.

(b) The disclosure required by subsection (a) shall be made by the administrator when the contract or proposed contract comes or ought reasonably to come to the attention of the administrator.

(c) Each financial institution shall have an executive officer’s conflict of interest policy, a copy of which shall be filed with the Commission.

(d) An administrator who has a material interest or a material relation within the scope of subsections (a) or (c) shall leave any meeting at which the contract or proposed contract is discussed, and shall refrain from voting on any matter related thereto that becomes the subject of action by the board of directors of the Palau bank, provided that such an interest, if so disclosed, shall not disqualify the interested person for purposes of constituting a quorum.

[Header B: **26 PNCA § 1061 FINANCIAL INSTITUTIONS**

]

(e) For the purposes of subsection (a), an interest shall be material if it is material with reference to the wealth, or business or family (any person who is related by marriage or to the second degree of consanguinity) interests of the person having the interest, and a person has a material interest in any company if the person owns, directly or indirectly, a significant interest in the company, or is an administrator of the company; and any partnership if the person is a partner.

(f) Where an administrator fails to disclose a material conflict of interest in accordance with this section, a court of competent jurisdiction may, on the application of the Palau bank, a bank shareholder, or the Commission, set aside the contract on such terms as it thinks fit.

[Header A: **OPERATIONAL REQUIREMENTS 26 PNCA § 1071**

]

(g) Administrators and employees of financial institutions have a duty to the financial institution that they serve and to the financial institution's customers to place the financial institution's interests and its customers' interests before their own pecuniary interest.

(h) Financial institutions shall have procedures so that they and their administrators and employees are not placed in a situation where their own interest conflicts with their duty to a customer.

Source

RPPL 6-3 § 2[49], modified

Notes

A new section 49 "Reporting of suspicious transactions and compliance with money laundering and counter terrorism financing standards" (codified as § 1062) was added by RPPL 7-41 § 2[49] and the former section 49 "Disclosure of conflicts of interest; fiduciary obligations, RPPL 6-3 § 2[49]" became section 50 (codified as § 1063).

Subchapter V

Operational Requirements

§ 1071. General prudential principles.

§ 1072. Financial activities.

§ 1073. Prohibited anti-competitive transactions and practices.

§ 1074. Prudential requirements.

§ 1075. Corporate records and records of transactions.

§ 1076. [Repealed]

§ 1077. Transactions with related persons.

§ 1071. General prudential principles.

(a) Financial institutions shall conduct their administration and operations in accordance with sound administrative and accounting procedures, the requirements of this chapter, and the regulations or orders issued by the Commission.

(b) Financial institutions shall maintain adequate capital and sufficient liquid resources, and, with due regard to the nature of their business, shall use best efforts to ensure that their assets are diversified as to risk of loss.

[Header B: **26 PNCA § 1071 FINANCIAL INSTITUTIONS**

]

Source

RPPL 6-3 § 2[50], modified.

§ 1072. Financial activities.

(a) Banks shall be authorized in their license to engage in the financial activities described as follows:

(1) receiving deposits (in the form of demand deposits, time deposits, or other forms of deposit) bearing interest or not in one currency;

(2) buying and selling for a bank's own account debt securities issued or guaranteed by the Government of the Republic of Palau or by governments or central banks of G-10 or European Union countries that are denominated and payable in Dollars and that have a term to maturity not exceeding one (1) year;

(3) providing payment and collection services;

(4) issuing and administering means of payment (including, payment cards, travelers' checks and bankers' drafts);

- (5) buying and selling foreign exchange for cash for the account of the bank and a customer;
- (6) providing for safekeeping of securities and other valuables;
- (7) receiving deposits bearing interest or not in more than one currency;
- (8) extending credit to enterprises, including, factoring with or without recourse;
- (9) borrowing funds and buying and selling for a bank's own account or for the account of customers (excluding underwriting) of:

[Footer A: Supp. 7 26 - 71]

(A) money market instruments (including, checks, bills of exchange, and certificates of deposit):

(B) debt securities;

(C) futures and options relating to debt securities or interest rates; or

[Header A: **OPERATIONAL REQUIREMENTS 26 PNCA § 1072**

]

(D) interest rate instruments:

- (10) money brokering;
- (11) financial leasing;
- (12) providing credit reference services;
- (13) providing services as a financial agent or consultant (not including services described in subsections (a)(1) and (2));
- (14) dealing in foreign exchange, including contracts for the future purchase or sale of foreign currencies;
- (15) providing trust services, including, the investment and administration of funds received in trust and administration of securities;
- (16) providing services as an investment portfolio manager or investment adviser;

(17) underwriting and distribution of debt and equity securities and brokering and dealing in equity securities; and

(18) such other financial activities as the Commission shall determine by regulation.

(b) No bank shall engage in financial activities other than or beyond the scope of those authorized pursuant to this chapter.

(c) Securities brokers and securities dealers shall be authorized in their license to engage in financial activities listed in section 1072(a)(15), (16), and (17).

Source

RPPL 6-3 § 2[51], modified. Subsections (a)(10),(17) are amended by RPPL 7-41 § 2[52].

§ 1073. Prohibited anti-competitive transactions and practices.

[Footer B: Supp. 7 26 - 72]

[Header B: **26 PNCA § 1073 FINANCIAL INSTITUTIONS**

]

(a) Financial institutions shall not enter into transactions or engage in practices that would provide them, alone or together with others, a position of dominance on the money, capital or foreign exchange markets, and shall not engage in manipulative devices or practices that could result in an unfair advantage for themselves or for third parties.

(b) No financial institution shall require any person to contract to receive any financial service or any goods or other service from an affiliate as a condition of being permitted to contract with the financial institution, except in accordance with ordinary and customary banking practices.

(c) No financial institution shall provide credit enhancement for or extend credit to facilitate the purchase of securities underwritten, placed, or distributed by it or its affiliate.

Source

RPPL 6-3 § 2[52], modified.

§ 1074. Prudential requirements.

(a) Banks shall observe the following limits and those prescribed by regulation of the Commission:

(1) the ratios and exposures to be maintained by a bank concerning its assets, risk-weighted assets, and off-balance-sheet items and various categories of capital and reserves; provided, that the capital to risk-weighted assets ratio of capital that shall be maintained in Palau shall not be less than eight percent (8%);

(2) the maximum aggregate amount of credits that a bank shall be permitted to have committed or outstanding to or for the benefit of any single person or group of interrelated persons shall not exceed twenty percent (20%) of its capital;

(3) the aggregate amount of credits that exceed ten percent (10%) of a bank's capital shall not exceed eight hundred percent (800%) of a bank's capital.

(b) Banks shall observe the following requirements when prescribed by regulation of the Commission:

(1) requirements concerning the minimum aggregate amount of liquid assets or specific categories of such assets in relation to the amount of liabilities or specific categories of liabilities;

[Header A: **OPERATIONAL REQUIREMENTS 26 PNCA § 1074**

|

(2) requirements concerning the maximum aggregate amount of real estate investments, or specific categories thereof;

(3) requirements concerning the classification and evaluation of assets and provisions to be made on the basis of such classification and evaluation against substandard and non-performing loans, and the time when earnings on non-performing loans may no longer be accounted for as income except as received in cash; and

(4) prohibitions, restrictions, or conditions concerning:

(A) the types or forms of credits and investments made;

(B) matching as to maturity and interest rate in respect of assets and liabilities; and

(C) unhedged positions in foreign currencies, precious metals, or precious stones exceeding a specified size.

(c) Notwithstanding the foregoing, the Palau branches of foreign banks shall be obligated to comply with the requirements of this section 1074(a) and (b) and any regulations promulgated hereunder only insofar as the Palau branches of foreign banks' compliance with such requirements is consistent with and does not conflict with the national law of the foreign bank's home jurisdiction. In the event of a conflict between the provisions of this chapter and any regulations promulgated hereunder and the national laws, rules, and regulations of the foreign bank's home jurisdiction, as they apply to the Palau branches of foreign banks, the conflicting national laws, rules, and regulations of the foreign bank's home jurisdiction shall prevail. The provisions of this section apply to "foreign banks" solely on a consolidated basis.

(d) No bank may engage directly in industry, commerce, or services in the Republic of Palau other than financial activities.

(e) No bank shall extend credit secured by its own equity securities except for employee stock option plans and pension plans.

(f) No bank shall purchase its own equity securities if the bank has or would have after the proposed transaction less than the minimum capital.

[Header B: **26 PNCA § 1074 FINANCIAL INSTITUTIONS**

]

Source

RPPL 6-3 § 2[53], modified. Subsection (c) is amended by RPPL 7-41 §2[54]. Subsection (a)(1) is amended by RPPL 8-28 § 4.

§ 1075. Corporate records and records of transactions.

(a) Every financial institution shall prepare and maintain at its head office written records containing:

(1) its charter and by-laws and all amendments thereto;

(2) a register of its shareholders, including the number of shares registered in the name of each shareholder;

- (3) minutes of meetings and resolutions of the board of directors;
- (4) minutes of meetings and resolutions of the shareholders;
- (5) accounting records exhibiting clearly and correctly the state of its business affairs, explaining its transactions and financial position for financial statements in accordance with generally accepted accounting principles (“GAAP”) or other such generally accepted accounting principles as may be adopted by the Commission by regulation;
- (6) records showing, for each customer, on a daily basis, particulars of its transactions with or for the account of that customer, and the balance owing to or by that customer; and
- (7) such other records as are required by this chapter, or by regulation or order of the Commission.

(b) Every bank shall cause to be created and shall maintain at the head office or branch office in the Republic of Palau of a foreign bank proper credit documentation.

Source

RPPL 6-3 § 2[54], modified. Subsection (b) amended by RPPL 7-41 § 2[55].

§ 1076. Community reinvestment. [Repealed]

[Footer A: Supp. 6 26 - 75]

Source

RPPL 6-3 § 2[55], modified. The “Community reinvestment” section was not included in the amended version of this law established in RPPL 7-41. Based on the foregoing, the Code Commission has decided that this section has been repealed.

[Header A: **OPERATIONAL REQUIREMENTS 26 PNCA § 1077**

]

§ 1077. Transactions with related persons.

(a) Banks shall not enter into a transaction with or for the benefit of related persons of the bank, if such transaction would be entered into on less favorable terms and conditions, or not at all, with or for the benefit of persons who are not so related to the bank. However, special employee banking programs approved by the bank’s board and the Commission shall not be prohibited by this section.

(b) Persons who are related to a bank are:

(1) any administrator of the bank;

(2) any significant shareholder of the bank;

(3) any person who is related to such administrator or significant shareholder by marriage, consanguinity to the second degree, or business interest; and

(4) any legal person that has a significant interest in a person in which the bank has a significant interest.

(c) No bank shall extend credit to or for the benefit of a person related to the bank if as a result thereof: (1) the aggregate amount outstanding on all credits extended by the bank to any one person so related to the bank would exceed twenty percent (20%) of a bank's capital; or (2) the aggregate amount outstanding on credits to all persons so related to the bank would exceed one hundred percent (100%) of the bank's capital.

(d) Credit extended by any bank to any related financial institution shall be subject to such additional conditions or restrictions as shall be prescribed by regulation of the Commission. For the purposes of this subsection, a related bank or financial institution shall be any financial institution in which the bank holds a significant interest.

(e) Any transactions by, with, or on behalf of a related person in violation of this section

[Footer B: Supp. 6 26 - 76]

shall be a crime known as "Wrongful Insider Transactions", and the related person(s) on whose behalf such a transaction is completed, with knowledge of such related person, and the bank administrator(s) approving the transaction(s) shall be subject to a fine of not more than two (2) times the aggregate amount of the transaction(s) in violation of this section, or imprisonment of not more than two (2) years, or both.

[Header B: **26 PNCA § 1077 FINANCIAL INSTITUTIONS**

]

(f) Any transactions by, with, or on behalf of a related person in violation of this section shall be subject to civil penalties and the related person(s) on whose behalf such a transaction is completed, with knowledge of such related person, and the bank administrator(s) approving the transaction(s) shall be subject to a civil penalty of ten

thousand dollars (\$10,000) for each transaction, or up to ten percent (10%) of the amount of the transaction(s), whichever is more.

(g) Penalties and criminal sanctions specified herein are not intended to preempt any other remedies available under the laws of the Republic of Palau.

Source

RPPL 6-3 § 2[56], modified. Subsections (a), (b), (c), and (d) amended and subsections (e), (f) and (g) were added by RPPL 7-4I § 2[56], modified.

Subchapter VI

Accounts, Financial Statements, Audit, Reporting, Examination

[Header A: **ACCOUNTS, FINANCIAL STATEMENTS, 26 PNCA § 1082**

AUDIT, REPORTING, EXAMINATION

]

§ 1081. Accounts and financial statements.

§ 1082. Audit.

§ 1083. Duties of auditors.

§ 1084. Publication and disclosure.

§ 1085. Reports and examination.

§ 1086. Production of records and information for examiners and auditors.

§ 1081. Accounts and financial statements.

(a) Financial institutions shall maintain at all times accounts and records and prepare annual financial statements adequate to reflect their operations and financial condition in accordance with Generally Accepted Accounting Principles (GAAP) promulgated by the Financial Accounting Standards Board or such other generally accepted accounting standards as approved by regulation of the Commission.

(b) The accounts, records, and financial statements of a bank shall reflect the operations and financial condition of its subsidiaries and Palau branch offices, on an individual and on a consolidated basis for the entirety of the financial institution.

Source

RPPL 6-3 § 2[57], modified. Subsection (a) amended by RPPL 7-41 § 2[57].

§ 1082. Audit.

(a) Within four (4) months after the end of each bank's fiscal year, each bank shall cause to be produced audited financial statements prepared on a consolidated basis by a licensed certified public accounting firm acceptable to the Commission, which firm shall present a full and fair view of the financial condition of the bank and shall submit such audited financial statements to Commission for its review. The banks licensed as of December 2, 2005 in the Republic of Palau shall become compliant with this section by March 30, 2008.

(b) No person having any interest in a bank other than as a depositor, and no officer, employee or agent of a bank, shall be eligible to produce, prepare, or otherwise conduct an audit of such bank. Any person appointed to produce, prepare, or otherwise conduct an audit of a bank who shall after such appointment acquire such interest, or become an officer, employee, or agent of such bank shall immediately be disqualified from producing, preparing, or otherwise conducting an audit of such bank for purposes of subsection (a).

[Header B: **26 PNCA § 1082 FINANCIAL INSTITUTIONS**

]

Source

RPPL 6-3 § 2[58], modified. Subsections (a) and (b) amended and subsection (c) essentially repealed by RPPL 7-41 § 2[58].

§ 1083. Duties of auditors.

(a) If an auditor or certified public accountant or accounting firm, in the course of the performance of their duties believes that: (1) there has been a serious breach of or noncompliance with the provisions of this chapter or regulations or guidelines issued by the Commission; (2) an apparent criminal offense involving fraud or other dishonesty has been committed; or (3) serious irregularities have occurred, including those that jeopardize the security of depositors and creditors, the auditor or certified public accountant or accounting firm shall immediately report the matter and specific supporting details to the Commission.

(b) No duty of confidentiality to which an auditor or certified public accountant or accounting firm of a bank may be subject [sic] shall be regarded as contravened or breached and no civil, criminal or disciplinary proceeding shall lie against the auditor or certified public accountant or accounting firm by reason of communicating in good faith to the Commission any information relevant to a bank's functions under this chapter, regulations and guidelines issued by the Commission, or other applicable laws.

Source

RPPL 7-41 § 2[59], modified.

§ 1084. Publication and disclosure.

(a) The Commission shall call upon each bank annually to make and publish a statement of its financial condition as of the close of business on a date specified in such call. Such statements shall be upon such form and reflect such information as may be prescribed by the Commission. Where practical, the Commission shall accept such statements prepared by banks for submission to the Federal Deposit Insurance Corporation (FDIC), provided that the Commission may request such additional branch specific information as is necessary to fulfill the intent of this section. Such statement shall be delivered to the Commission and made available to the public within the time specified. A copy of the latest called statement shall be kept posted in the lobby of the bank at a point accessible to the public. Any bank which fails to provide the Commission with such statement or provide such statement to a customer or potential customer upon demand, or to post such statement in its lobby, shall be subject to a penalty of one thousand dollars (\$1,000) for each day for which the violation occurs.

[Header A: **ACCOUNTS, FINANCIAL STATEMENTS, AUDIT, 26 PNCA § 1085**

REPORTING, EXAMINATION

]

(b) Each bank shall, upon opening a savings account or issuing a certificate of deposit, inform the customer in simple and clear written language about the manner in which the interest is calculated, the periods for which and the circumstances under which the interest is or is not payable, and penalties and forfeitures, if any. Each bank shall upon opening a checking account inform the customer in clear and simple written language about all fees which may be charged. Each bank shall prior to entering into a loan agreement inform the customer in clear and simple written language about the rate of interest and dollar amount of interest which will be payable if the loan is repaid according to the contractual terms, and the manner in which the interest is calculated.

(c) Upon request, banks shall make available to the public their annual audited reports on a consolidated basis.

Source

RPPL 6-3 § 2[59], modified. Subsection (a) amended and subsection (c), added by RPPL 7-41 § 2[60], modified.

Notes

Former § 1084, "Branches of foreign banks" RPPL 6-3 § 2[60], was not included in the amended version of this law established in RPPL 7-41. Based on the foregoing, the Code Commission has decided that this section has been repealed.

§ 1085. Reports and examination.

(a) The Commission shall regularly conduct on-site examinations of the operations and affairs of every financial institution, and where the Commission so specifies, foreign branches of any Republic of Palau financial institutions, by examiners of the Commission or auditors appointed by the Commission. No one shall attempt to harass, intimidate, or exert undue influence on an examiner of the Commission or the auditors appointed by it.

(b) The primary purpose of any audit or examination under subsection (a) shall be to determine whether:

(1) a financial institution is in a safe and sound financial condition;

[Header B: **26 PNCA § 1085 FINANCIAL INSTITUTIONS**

]

(2) the requirements of this chapter, rules and regulations adopted by the Commission, and other applicable laws are being observed by the financial institution; and

(3) the business of the financial institution is being operated in a lawful and prudent manner.

(c) For the purpose of determining the condition of a financial institution and its compliance with this chapter and regulations adopted by the Commission in the course of an examination made under subsection (a), the Commission may cause an examination to be made of any affiliates of the financial institution in the Republic of Palau to the same extent that an examination may be made of the financial institution.

]

Source

RPPL 6-3 § 2[61], modified. Amended in its entirety by RPPL 7-41 § 2[61], modified.

§ 1086. Production of records and information for examiners and auditors.

(a) Every financial institution and every affiliate of such financial institution shall, pursuant to an examination conducted under section 1085, produce for the inspection of any examiner or auditor duly authorized by the Commission to examine the financial institution, at such times and in such places as the examiner or auditor may specify (being times and places which, in the opinion of the examiner or auditor, would not be detrimental to the conduct of the normal daily business of such financial institution), all books, minutes, accounts, cash, securities and investments, documents and vouchers in their possession or custody, relating to their business and shall supply all information concerning their business as may reasonably be required by such examiner or auditor within such time as the examiner or auditor may specify. Any request for records regularly maintained at a home office outside the Republic of Palau must be produced within thirty (30) days from the date of the request.

(b) If any documents are not produced or requested information is not supplied in accordance with subsection (a), the defaulting financial institution or affiliate, or both, as the case may be, shall be subject to a penalty of five thousand dollars (\$5,000) for each day in which it fails to produce or supply each such document or information.

(c) If any information supplied or document produced under subsection (a) is materially false; the financial institution or affiliate, or both, as the case may be, shall be guilty of an offense and liable to a penalty of ten thousand dollars (\$10,000) for each such false document or information.

Source

RPPL 7-41 § 2[62], modified.

Subchapter VII

Infractions, Penalties, Remedial Measures

]

§ 1091. Infractions, penalties, remedial measures.

§ 1091. Infractions, penalties, remedial measures.

(a) As provided for by rules and regulations promulgated hereunder, and except as otherwise provided for herein the remedial measures and penalties provided for infractions described in this section shall be determined in particular cases by the Commission and shall be imposed subject to the provisions of the Administrative Procedure Act, 6 PNC Chapter 1, unless otherwise provided by law.

(b) If the Commission finds that an administrator or employee of a financial institution, or the financial institution itself acting through any authorized person, has: violated the provisions of this chapter, any rule, regulation, or order issued by the Commission, or any other law applicable to financial institutions; refused to comply with the provisions of this chapter, any rule, regulation, or order issued by the Commission, or any other law applicable to financial institutions; willfully neglected to perform his or her duties, or committed a breach of trust or of fiduciary duty; committed any fraudulent or questionable practice in the conduct of the financial institution's business that endangers the financial institution's reputation or threatens its solvency; refused to submit to examination; conducted business in an unsafe or unauthorized manner; or violated any conditions of its license or any agreement with the Commission, the Commission shall give notice in writing to such financial institution and any offending administrator or employee, stating the particular violations or practices complained of, and the Commission shall call a meeting of the directors of said financial institution and lay before them such findings and demand a discontinuance of such violations and practices as have been found, and may take the following actions:

(1) issue written warnings;

(2) conclude a written agreement with the bank providing for a program of remedial action;

[Header B: **26 PNCA § 1091 FINANCIAL INSTITUTIONS**

]

(3) issue an order to cease and desist from such violations and practices if the Commission finds it is necessary and in the best interests of the financial institution involved and its depositors, creditors, and stockholders;

(4) impose fines on the financial institution or corporation, or on its administrators or principal shareholders in an amount of up to ten

thousand dollars (\$10,000) per day for each day that the violation continues; provided, however, that fines shall be of similar amount for comparable financial institutions or corporations, with comparable total assets for the same type of violation;

(5) suspend temporarily or dismiss administrators from positions in a financial institution or corporation;

(6) impose restrictions on the operations of the financial institution or corporation;

(7) revoke the license of the financial institution or corporation;

(8) order the financial institution or corporation dissolved; or

(9) revoke the license of a Palau financial institution or the Palau branch of a foreign financial institution and appoint a receiver for the financial institution under this chapter.

(c) Except where otherwise specifically provided in this chapter, the classes of violations of this chapter and the penalties and remedial measures, which attach thereto, and the procedures pertaining to the issuance and imposition of same shall be set forth in rules and regulations adopted by the Commission and shall not be subject to appeal under the Administrative Procedure Act, 6 PNC Chapter 1. With respect to a cease and desist order issued pursuant to subsection (b), the procedure shall be as set forth in the remainder of this subsection. At the directors' meeting provided for in subsection (b), or within thirty calendar days thereafter, the Commission shall serve on the financial institution, its directors and any offending administrators or employees, a written order to cease and desist from the violations and practices enumerated therein and to take such affirmative action as may be necessary to correct the conditions resulting from such violations or practices. Said order to cease and desist shall be effective upon issuance if the Commission finds that immediate and irreparable harm is threatened to the financial institution or its depositors, creditors, or stockholders; otherwise, said order to cease and desist shall state the effective date, being not less than ten calendar days after delivery or mailing of the notice thereof. A copy of said order to cease and desist shall be entered upon the minutes of the directors of the financial institution, who shall thereafter certify to the Commission in writing that each has read and understood the order to cease and desist. All copies of notices, correspondence or other records of the Commission relating to an order to cease and desist shall be confidential and shall not be publicized or revealed to the public except in any lawsuit authorized by this chapter or by other lawful order or authority. The Administrative Procedure Act shall not apply to orders to cease and desist issued hereunder.

(d) For Palau banks whose capital is determined by the Commission to be less than the required minimum capital, in addition to the measures described in subsection

(b), the Commission may require the bank to adopt a capital restoration plan satisfactory to the Commission that provides for the bank to attain capital adequacy within a specified time-frame as may be acceptable to the Commission.

(e) (1) The penalties described in subsection (b) may be applied to any person who violates any of the provisions of section 3.

(2) The Commission shall also, notwithstanding any other provision of law, be authorized to liquidate the business of such person under Subchapter IX of this chapter if it finds the financial institution to be insolvent.

(f) It shall be a criminal offense punishable by a fine of not less than one thousand dollars (\$1,000) nor more than double the amount of credit sought or imprisonment of not less than one (1) year nor more than ten (10) years, or both, for a person to willfully make a misstatement of material fact or fail to state a fact material to an application for credit.

(g) The measures and penalties provided in this section shall not preclude application of other civil penalties or criminal penalties as provided by other laws of the Republic of Palau.

(h) Any fines imposed in accordance with subsection (b)(4) or proceeds in accordance with subsection (e)(2) shall be paid to the National Treasury.

(i) No civil or criminal liability or professional sanctions may be imposed against the bank or its directors, officers, employees, agents, or attorneys who used due diligence for good faith compliance with the requirements of this chapter.

Source

RPPL 6-3 § 2[62], modified. Amended in its entirety by RPPL 7-41 § 2[63], modified.

Subchapter VIII

Electronic Banking

[Header B: **26 PNCA § 10.101 FINANCIAL INSTITUTIONS**

]

§ 10.101. Computer access.

§ 10.101. Computer access.

(a) Banks may provide to their customers remote access to their accounts through computers by proprietary personal computer software or by the Internet (hereinafter “computer access”).

(b) Banks that permit computer access may permit customers to transfer funds between accounts, initiate payments, and apply for credit by computer or permit any other activities for financial services a bank is not prohibited by law from offering.

(c) Banks that permit computer access must provide customers using computer access with a privacy policy statement that includes information to customers regarding what information concerning them is to be collected and how the information will be used, and permit such customers to opt out of information sharing concerning their credit eligibility information by banks with affiliates or with non-affiliated third parties.

(d) Banks providing computer access must maintain adequate security for their Internet or proprietary platforms, including adequate systems for customer authentication and for physical and logical protection against unauthorized external access by individual penetration attempts, computer viruses, denial of service, and other forms of electronic access.

Source

RPPL 6-3 § 2[63], modified.

Notes

Section 10.101 was previously codified as § 1101 and was amended to conform with the Code numbering and format.

[Footer A: Supp. 7 26 - 85]

Subchapter IX

Receivership for Banks

[Header A: **RECEIVERSHIP FOR BANKS 26 PNCA § 10.111**

]

§ 10.111. Bases for initiation of receivership.

§ 10.112. Notice and registration of receivership.

§ 10.113. Powers and duties of receiver; effects of receivership.

§ 10.114. Priorities in payment of claims.

§ 10.115. Final reporting to the Commission.

§ 10.116. Miscellaneous receivership provisions.

§ 10.111. Bases for initiation of receivership.

(a) If the Commission determines that:

(1) a Palau bank is insolvent or the foreign bank which has a branch in the Republic of Palau is determined to have been insolvent by the regulatory agency of the jurisdiction in which it is domiciled; or

(2) a Palau bank or branch of a foreign bank in the Republic of Palau is in violation of one or more of the provisions of this chapter and such violation is deemed by the Commission to cause significant risk to the financial institution's depositors or the Republic of Palau's financial system, the Commission must revoke, modify, or suspend the license of that Palau bank or the Palau branch of the foreign bank and forthwith take possession and control of that Palau bank or the Palau branch of the foreign bank through a managing or liquidating receiver appointed by the Commission, provided that the Commission shall appoint a managing receiver where practical, who shall ultimately return the bank to private management, unless, in the sole discretion of the Commission, a liquidating receiver is required to safeguard the depositors or the financial system of the Republic of Palau.

Upon recommendation by the receiver and approval by the Commission, a receivership may be converted from a liquidating receivership to a managing receivership or from a managing receivership to a liquidating receivership. During any and all receivership actions and liquidation proceedings pursuant to this chapter, the Commission shall be advised and represented by the Office of the Attorney General. The receiver may be represented by the Office of the Attorney General, or if deemed necessary by the Commission, the receiver may hire outside counsel. The provisions of this chapter shall apply to any receivership that is in effect at the time of the effective date of this chapter.

[Header B: **26 PNCA § 10.111 FINANCIAL INSTITUTIONS**

]

(b) For the purposes of this chapter:

[Footer B: Supp. 7 26 - 86]

(1) a Palau bank shall be deemed to be insolvent if: (A) the bank is not paying its obligations in full as they fall due; (B) the value of the liabilities of the bank exceeds the value of the assets of the bank; or, (C) the bank has capital less than one-quarter of the required minimum capital; and

(2) the value of a bank's assets, liabilities, and capital shall be determined in accordance with valuation standards and procedures prescribed by regulation of the Commission.

(c) A receiver may be a person from the private sector or an official of the Commission who meets the qualifications prescribed by regulations of the Commission. The Commission may, for good cause, dismiss a receiver it appoints. The terms of the liquidating receiver's compensation shall include incentives for meeting the objectives described in § 10.114(a) and penalties for failure to meet such objectives.

(d) The compensation of the receiver and experts that he or she engages, reimbursement of their expenses, and expenses of the Commission in execution of this subchapter with respect to a bank shall be paid from the assets of the bank. Payments to the receiver shall be made on a current basis if in the judgment of the receiver there are sufficient liquid assets; provided, however, that the receiver and his or her agents shall not receive in any calendar month a larger pro rata share in payment of their claims for fees and expenses than depositors described in § 10.114(a)(2) receive in payment of their claims. Any moneys owing to the receiver at the end of the term of receivership shall be paid from the proceeds from the sales of the bank's assets with the priority described in § 10.114.

Source

RPPL 6-3 § 2[64], modified. Subsections (a), (c), and (d) were amended by RPPL 7-41 § 2[65].

Notes

Section 10.111 was previously codified as § 1111 and was amended to conform with the Code numbering & format.

RPPL 7-53 § 5 provided additional aspects of the law established by RPPL 7-41 § 65(a) but are not specified as an amendment of the law established in RPPL 7-41. The last six sentences of RPPL 7-53 § 5 read: "In addition to the authority of the Receiver of PSB to hire independent counsel as provided in RPPL No. 7-41, Section 65(a), the Independent Counsel is authorized to represent the Receiver of PSB in civil actions. Upon request by the Independent Counsel, the

Attorney General and the Special Prosecutor may provide assistance to the Independent Counsel. The Independent Counsel is authorized to hire such staff as may be necessary to carry out the functions under this chapter. The Independent Counsel shall only be removed for cause or by lack of appropriation. The Independent Counsel will not be removed for cause without the President's first consulting the President of the Senate and the Speaker of the House of Delegates and ascertaining that their consensus is in accord with his proposed action. In the event that Independent Counsel resigns before finishing his or her duties and responsibilities, the Independent Counsel must give adequate notice to the President to allow sufficient time for hiring a replacement."

Feichtinger v. Udui, 16 ROP 173, 175 (2009).

[Header A: **RECEIVERSHIP FOR BANKS 26 PNCA § 10.113**

]

§ 10.112. Notice and registration of receivership.

Whenever a receiver is appointed, the receiver shall within two (2) days of such appointment:

(a) post in each office of the bank a notice announcing such action pursuant to this chapter, specifying the effective date and time of possession by the receiver and specifying that:

(1) authorizations of persons to engage the financial responsibility of the bank have been canceled;

(2) persons who previously had authorization to give instructions on behalf of the bank with respect to payment or transfer of the bank's assets or assets managed by the bank are no longer so authorized; and

(3) the bank's license has been revoked, modified, or suspended.

(b) publish a notice to the same effect in one newspaper of general circulation and arrange for the publication of such notice each week for the next four (4) weeks.

Source

RPPL 6-3 § 2[65], modified. Subsection (a)(3) was amended by RPPL 7-41 § 2[66].

Notes

Section 10.112 was previously codified as § 1112 and was amended to conform with the Code numbering and format.

Feichtinger v. Udui, 16 ROP 173, 175 (2009).

§ 10.113. Powers and duties of receiver; effects of receivership.

(a) A liquidating receiver shall have all the powers of the administrators and shareholders of the bank for which he or she has been appointed and, notwithstanding that the bank's license has been revoked, may, subject to subsection (b), operate the bank in its own name, and shall take the action in selling the bank or its assets that, in his or her opinion, is likely to result in satisfying more of the bank's liabilities to depositors and other creditors within three (3) years from the date of his or her appointment; provided, that the Commission may extend the receivership for a further period of up to two (2) years if, in its opinion, such extension will result in a material increase in the satisfaction of the bank's liabilities. Subject to the primary objective of maximum satisfaction of the bank's liabilities to depositors and creditors, the receiver shall expedite the sale of the bank or its assets and payments to depositors and other creditors. A managing receiver shall have all the powers of the administrators and shareholders of the bank for which he or she has been appointed and may operate the bank in its own name and may take such actions including the sale of any assets necessary to correct deficiencies with the bank. In addition to the general powers available to the receiver under this section, a managing receiver may:

[Header B: **26 PNCA § 10.113 FINANCIAL INSTITUTIONS**

]

(1) continue or change any operations of the bank including taking deposits and extending credit to new or existing customers;

(2) discontinue any operations or policies;

(3) borrow money on either a secured or unsecured basis;

(4) stop or limit the payment of any obligation;

(5) employ or dismiss any officer, employee, or professional advisor;

(6) discharge any obligation to a related person or entity;

(7) offset any deposit obligation against any outstanding loan or other obligation owed by the depositor;

(8) sue any current or former officer, director, or professional of the bank; and

(9) execute any instrument in the name of the bank, and initiate, defend, and conduct in the name of the bank, any action or legal proceeding.

(b) A litigation receiver may:

- (1) continue any operations other than the taking of deposits and extending credit to other than existing customers in relation to outstanding assets;
- (2) discontinue any operations;
- (3) borrow money on an unsecured basis, if borrowing is not possible on the security of the assets of the bank;
- (4) stop or limit the payment of any obligation;
- (5) employ or dismiss any officer, employee, or professional advisor; and

[Header A: **RECEIVERSHIP FOR BANKS 26 PNCA § 10.113**

]

- (6) execute any instrument in the name of the bank, and initiate or defend and conduct in its name any action or legal proceeding.

(c) The receiver shall have unrestricted access to and control over the offices, books of account and other records, and other assets of the bank for which he or she has been appointed and its subsidiaries.

(1) Any person who willfully interferes with a receiver's access to and control over the offices, books of account and other records, and other assets of a bank for which he or she has been appointed shall be guilty of a criminal offense and subject to imprisonment for a period of not less than one (1) year nor more than five (5) years or fined in an amount not less than one thousand dollars (\$1,000) per day nor more than ten thousand dollars (\$10,000) per day for each day that the offense continues, or both.

(2) At the request of a receiver, a Public Safety Officer shall assist the receiver to gain access to bank premises or control over bank records and other assets by use of force.

(d) The Commission shall approve or deny a merger of the bank with another bank, or sale of substantially all the bank's assets to any one bank, subject to section 1054 of this chapter.

(e) The powers of the administrators shall be suspended during a receivership; provided, however, that they may be instructed by the receiver to exercise specified functions for the bank; further provided, that such persons are subject to dismissal by the receiver from their positions at the bank and shall thereupon cease to receive compensation from the bank.

(f) Forthwith upon his or her appointment, the receiver shall secure the assets of the bank to seek to prevent their dissipation by theft or other improper action, by taking actions including, but not limited to, the following:

(1) changing the locks (and limiting access to the new keys) on external entrances to the bank's offices and on doors to internal offices which contain financial assets or information or equipment which could enable a person to gain unlawful access to financial assets;

[Header B: **26 PNCA § 10.113 FINANCIAL INSTITUTIONS**

|

(2) changing or establishing access codes to the bank's computers and granting access to not more than three trustworthy employees; and

(3) suspending the payment of capital distributions in general and payment of any kind to administrators and principal shareholders; provided, however, that base compensation may be paid to administrators for services rendered in their capacity as administrators of the bank.

(g) Forthwith upon his or her appointment, the receiver shall establish a new balance sheet for the bank, based on his or her determination of liquidation values of the bank's assets with a corresponding reduction in the value of the bank's liabilities in the reverse order of priority in payment of distributions in a liquidation of a bank's assets described in § 10.114. Liabilities shall be deemed due and payable and interest shall cease to accrue as of the date of the appointment of the receiver. Unmatured liabilities shall be discounted to present value at the discount rate published by the Commission on the date of appointment of a receiver.

(h) Within one (1) month of taking possession of a bank, the receiver shall make an inventory of the assets and property of the bank and transmit a copy thereof to the Commission, which shall make a copy available for examination by the public.

(i) After fifteen (15) days from the date of his or her appointment, the receiver may make available for withdrawal by depositors or payment to other creditors such amounts as in his or her opinion may appropriately be used for that purpose; provided, however, that all depositors or other creditors who are similarly situated shall be treated in the same manner; and further provided, that before a general distribution of payments to creditors of the bank or the assumption of the bank's liabilities by another bank, creditors other than those described in section 10.114(a)(2) shall receive no more than fifty percent (50%) of the amount of their allowed claims as determined by the receiver.

(j) When a receiver has taken possession of a bank:

(1) shareholders' rights shall be extinguished except for the right to receive dividends, if any, under section 10.114(d) and the right to receive any net payment received from the sale of the bank or substantially all its assets if the receiver determines that the bank had positive net worth at the time of sale; and

[Footer A: Supp. 7 26 - 91]

(2) the receiver may issue new shares in the bank, sell the assets of the bank, or arrange for the assumption of liabilities of the bank on terms he or she considers fair.

[Header A: **RECEIVERSHIP FOR BANKS 26 PNCA § 10.113**

]

(k) The procedures for determining of the validity and priority of claims and for liquidation of bank assets and return of bank customers' property shall be prescribed by regulation of the Commission; provided, however, that the sale of bank assets shall be in a transparent and commercially reasonable manner by one or more methods of auction or negotiated transactions.

(l) Any assets of the bank that have not been sold at the end of the term of the receivership may be abandoned by the receiver.

(m) The receiver shall report each month to the Commission on the progress of the receivership, including the most recent financial statements of the bank, statements of sources and uses of funds, information concerning the prospects for the sale of the bank or its assets, and projections of payment of the bank's liabilities.

Source

RPPL 6-3 § 2[66], modified. Subsections (a), (b), (c)(1), (f)(2), (g), (i), (j)(1), and (l) amended by RPPL 7-41 § 2[67], modified.

Notes

Section 10.113 was previously codified as § 1113 and was amended to conform with the Code numbering & format.

Feichtinger v. Udui, 16 ROP 173, 175 (2009).

Pac. Sav. Bank, Ltd. v. Toribiong, 16 ROP 81, 82 (2008).

Pac. Sav. Bank, Ltd. v. Ueda, 16 ROP 79, 80 (2008).

Pac. Sav. Bank, Ltd. v. Elbelau, 16 ROP 77, 78 (2008).

Pac. Sav. Bank, Ltd. v. Holm, 16 ROP 75, 76 (2008).

Pac. Sav. Bank, Ltd. v. A. Elechuus, 16 ROP 73, 74 (2008).

Pac. Sav. Bank, Ltd. v. D. Elechuus, 16 ROP 71, 72 (2008).

Pac. Sav. Bank, Ltd. v. Tarkong, 16 ROP 69, 70 (2008).

Pac. Sav. Bank, Ltd. v. Rumong, 16 ROP 67, 68 (2008).

Pac. Sav. Bank, Ltd. v. Kumaichi, 16 ROP 65, 66 (2008).

Pac. Sav. Bank, Ltd. v. Ongelungel, 16 ROP 63, 64 (2008).

Pac. Sav. Bank, Ltd. v. Ichikawa, 16 ROP 1, 2, 3 (2008).

Pac. Sav. Bank v. Llecholch, 15 ROP 124, 125 (2008).

Pac. Sav. Bank v. Ketund Corp., 15 ROP 121, 122 (2008).

Pac. Sav. Bank v. Officers Mgmt. Corp., 15 ROP 117, 118 (2008).

§ 10.114. Priorities in payment of claims.

(a) In any liquidation of a bank's assets, allowed secured claims shall be paid to the extent of the realization of the security, or the security shall be delivered to the secured creditor, and from the proceeds other allowed claims shall be paid in priority to all other debts, in the order of the class of claims described below:

(1) necessary and reasonable expenses incurred by the receiver and the Commission, including professional fees, in application of the provisions of this subchapter;

(2) deposits of unrelated depositors, up to an amount not exceeding two thousand dollars (\$2,000) per depositor;

[Footer B: Supp. 7 26 - 92]

(3) the amounts not paid on unrelated deposits under subsection (2);

(4) other claims of creditors against the bank; and

(5) all deposits of related persons as set forth in § 1077(b).

(b) If the amount available for payment for any class of claims listed under subsection (a) is insufficient to provide payment in full, such claims shall abate in equal proportions.

[Header B: **26 PNCA § 10.114 FINANCIAL INSTITUTIONS**

]

(c) After payment of all claims filed, any remaining allowable claims that were not filed within the time specified by regulation of the Commission for the filing shall be paid.

(d) Any proceeds remaining after all claims of depositors and other creditors have been paid shall be distributed among the shareholders of the bank in accordance with their rights and interests.

Source

RPPL 6-3 § 2[67], modified. In subsection (a) subsections (2), (3), (4) and (5) were amended by RPPL 7-41 § 2[68].

Notes

Section 10.114 was previously codified as § 1114 and was amended to conform with the Code numbering & format.

Feichtinger v. Udui, 16 ROP 173, 175, 176, 177 (2009).

§ 10.115. Final reporting to the Commission.

(a) Once the proceeds for the sale of assets of a bank have been distributed pursuant to § 10.114, the receiver shall provide a report to the Commission that includes income and expense and sources and uses of funds statements during the period of receivership.

(b) Upon approval by the Commission of the report by a receiver described in subsection (a), the Commission and the receiver shall be relieved of any further responsibility in connection with the receivership of a bank.

(c) Once the managing receiver finds that, in his or her professional opinion, that the managing receiver is no longer necessary, a report shall be filed with the Commission to that effect. Within thirty (30) days, the Governing Board of the Commission shall vote whether to terminate or continue the receivership. If the Governing Board of the Commission votes to terminate the receivership, the managing receiver shall be empowered to take such actions as are necessary to terminate the managing receivership and return the financial institution to private management, taking into account the need to provide a smooth transition, which do not jeopardize the financial institution or its depositors. In no event shall such transition take more than ninety (90) days, unless otherwise approved by the Commission.

[Header A: **RECEIVERSHIP FOR BANKS 26 PNCA § 10.116**

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Source

RPPL 6-3 § 2[68], modified. Subsection (c) added by RPPL 7-41 § 2[69].

Notes

Section 10.115 was previously codified as § 1115 and was amended to conform with the Code numbering & format.

Feichtinger v. Udui, 16 ROP 173, 175 (2009).

§ 10.116. Miscellaneous receivership provisions.

(a) Professional employees appointed to represent or assist a receiver or the Commission in connection with a receivership shall not be paid amounts greater than are payable to employees or agents of banks for similar services, except that the Commission may authorize payment at higher rates, if the Commission determines that paying such higher rates is necessary in order to recruit and retain necessary personnel.

(b) The Commission shall have authority to indemnify a receiver and his or her agents for their actions on such terms as the Commission deems proper.

(c) All claims arising out of or in connection with the insolvency of a bank or a bank in receivership against a bank receiver or the Commission in relation to a bank licensed under this chapter shall be finally settled in accordance with the provisions of this chapter. No appeals from the acts of a receiver or the Commission may be taken except that the bank's shareholders holding not less than ten percent (10%) of any class of shares with the right to vote may appeal against the appointment of a receiver for a bank.

(d) Any court proceeding arising out of or in connection with a bank insolvency or a bank in receivership against a bank administrator, receiver, or the Commission in relation to a bank licensed under this chapter shall be brought before the Supreme Court.

(e) If the owners of a bank wish to voluntarily liquidate the bank under other law, they shall submit a request for approval of the liquidation to the Commission accompanied by such information as the Commission may prescribe by regulation. The Commission shall make due inquiry into the affairs of the bank and may approve the voluntary liquidation under other applicable law or determine that this chapter applies and appoint a receiver pursuant to § 10.112.

Source

RPPL 6-3 § 2[69], modified. The parenthesized 10% was added by RPPL 7-41 § 2[70].

[Header B: 26 PNCA § 10.116 FINANCIAL INSTITUTIONS

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Notes

Section 10.116 was previously codified as § 1116 and was amended to conform with the Code numbering & format.

Feichtinger v. Udui, 16 ROP 173, 175, 176 (2009).

Subchapter X

Securities Brokers and Dealers

§ 10.121. Securities dealers' obligations.

§ 10.122. Securities brokers' obligations.

§ 10.123. Customers' assets.

§ 10.124. Bond for foreign corporations.

§ 10.125. Insider trading.

§ 10.121. Securities dealers' obligations.

For the purposes of this chapter, a securities dealer must:

(a) minimize the risks of its operations and diversify its securities activities in accordance with any regulations issued by the Commission;

[Header A: **RECEIVERSHIP FOR BANKS 26 PNCA § 10.122**

]

(b) limit its exposure so that the securities of any one issuer do not constitute more than five percent (5%) of its portfolio;

(c) have the minimum capital prescribed by regulation of the Commission; and

(d) value its securities portfolio in terms of market price.

Source

RPPL 6-3 § 2[71], modified.

Notes

Section 10.121 was previously codified as § 1121 and was amended to conform with the Code numbering & format.

§ 10.122. Securities brokers' obligations.

[Header A: **SECURITIES BROKERS AND DEALERS 26 PNCA § 10.123**

]

For the purposes of this chapter, a securities broker must:

(a) ensure that an investment opportunity it recommends to or effects for a customer is suitable for the customer in terms of net worth, station in life, and tolerance for risk;

(b) not deal in the securities of an issuer immediately prior to recommending that it or a customer engage in a similar transaction on the customer's behalf;

(c) not prefer some customers over others, including, by giving them earlier access to information or by executing their orders first or at better prices;

(d) not recommend dealing to customers, or trade for customers, for the primary purpose of making commissions;

(e) provide customers with a customer agreement setting out the information required by regulations prescribed by the Commission.

Source

RPPL 6-3 § 2[72], modified.

Notes

Section 10.122 was previously codified as § 1122 and was amended to conform with the Code numbering & format.

§ 10.123. Customers' assets.

For the purposes of this chapter, securities brokers shall not have the use of customers' cash or securities as the broker's capital in the ordinary course of the broker's own business. Securities brokers that are not banks must clear transactions with customers in the Republic of Palau through a bank in the Republic of Palau that acts as escrow agent for securities purchases and sales whereby securities will be delivered against payment. Securities must be kept by a bank custodian in the Republic of Palau or a foreign custodian accredited by a securities commission that is a member or a working partner of IOSCO.

Source

RPPL 6-3 § 2[73], modified. Amended by RPPI. 7-41 § 2[74].

Notes

Section 10.123 was previously codified as § 1123 and was amended to conform with the Code numbering & format.

§ 10.124. Bond for foreign corporations.

[Header B: **26 PNCA § 10.123 FINANCIAL INSTITUTIONS**

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For purposes of this chapter, a securities broker or dealer that is a registered foreign corporation in the Republic of Palau that wishes to conduct securities brokerage or dealing in the Republic of Palau must either be a duly registered broker dealer with the United States Securities and Exchange Commission or must meet criteria set forth in regulations promulgated pursuant to this chapter.

Source

RPPL 6-3 § 2[74], modified. Amended by RPPL 7-41 § 2[75].

Notes

Section 10.124 was previously codified as § 1124 and was amended to conform with the Code numbering & format.

§ 10.125. Insider trading.

For the purposes of this chapter, none of the following persons shall deal or get others to deal in the securities of an issuer if they have confidential market-sensitive information about the issuer, or about the plans of another person in relation to it:

- (a) officers and employees of the issuer or of the other person;
- (b) those associated in a professional capacity with the issuer or with the other person;
- (c) those who obtain the information, directly or indirectly, from the persons described in subsections (a) and (b).

Source

RPPL 6-3 § 2[75], modified.

Notes

Section 10.125 was previously codified as § 1125 and was amended to conform with the Code numbering and format.

Subchapter XI

Miscellaneous and Transitional Provisions

[Header A: **MISCELLANEOUS AND TRANSITIONAL 26 PNCA § 10.131**

PROVISIONS

]

§ 10.131. Licenses of existing institutions; compliance with the chapter.

§ 10.132. Regulatory and supervisory powers of the Commission.

§ 10.133. Publication of rules and regulations; fees.

§ 10.134. Exemption of National Development Bank of Palau and Pacific Islands Development Bank.

§ 10.135. Exemption.

§ 10.136. Fraudulent conveyance.

§ 10.131. Licenses of existing institutions; compliance with the chapter.

(a) Entities conducting the business of a bank in the Republic of Palau on the effective date of this chapter that wish to operate as a bank in the Republic of Palau must comply with the requirements of § 1042. Cessation of banking or winding up by financial institutions doing business in the Republic of Palau as of the effective date of this chapter shall be in accordance with applicable laws or regulations other than this chapter. The Commission may appoint a receiver to liquidate the business of entities that must wind their affairs in accordance with the provisions of this subsection.

(b) Banks whose organization, administration, operations, or financial condition do not comply in one or more respects with the requirements of this chapter or with any regulation or order issued by the Commission pursuant thereto shall submit to the Commission a detailed plan acceptable to the Commission describing the means and timetable, being not more than one year from the effective date of this chapter, by which the bank will achieve and thereafter comply with the requirements of this chapter and any regulation or order issued by the Commission. Such plan shall be submitted within sixty (60) days from the date of a written request by the Commission, unless a shorter time is specified due to the severity of the deficiency or noncompliance.

Source

RPPL 6-3 § 2[77], modified. Amended by RPPL 7-41 § 2[78], modified.

Notes

Section 10.131 was previously codified as § 1131 and was amended to conform with the Code numbering and format.

§ 10.132. Regulatory and supervisory powers of the Commission.

[Header B: **26 PNCA § 10.131 FINANCIAL INSTITUTIONS**

]

(a) The Commission shall be empowered to issue such regulations, orders, or guidance, to visit such offices of financial institutions, and to examine such accounts,

books, documents and other records as the Commission shall deem necessary or advisable to give effect to the provisions of this chapter.

(b) The Administrative Procedure Act, 6 PNC Chapter 1, shall apply to any decision made by the Commission except ministerial and administrative decisions. A decision of the Commission to which the Administrative Procedure Act is applicable shall be treated as a contested case under the Administrative Procedure Act and shall be reviewed and decided under the Administrative Procedure Act and any related judicial decision.

Source

RPPL 6-3 § 2[78], modified. Subsection (b) amended by RPPL 7-41 § 2[79].

Notes

Section 10.132 was previously codified as § 1132 and was amended to conform with the Code numbering and format.

§ 10.133. Publication of rules and regulations; fees.

(a) Rules and regulations issued by the Commission shall be published in accordance with the Administrative Procedure Act, 6 PNC Chapter 1.

(b) The Commission shall by rules and regulations charge fees to financial institutions for its supervisory and regulatory services that shall defray its direct and indirect costs incurred in providing such services. Fees shall be assessed against banks in relation to extraordinary expenses incurred by the Commission or its agents in relation to a bank. The annual fee to banks for ordinary supervision and regulation shall be set by regulations promulgated by the Commission.

(c) All fees paid to the Commission shall be deposited in the National Treasury to the credit of a special non-lapsing fund, not subject to the reprogramming authority of the President of the Republic of Palau, known as the "Financial Institutions Commission Expense Fund" and shall be used exclusively for the administration of the statutory duties of the Commission.

Source

RPPL 6-3 § 2[79], modified. Subsections (a) and (b) amended and subsection (c) added by RPPL 7-41 § 2[80].

Notes

Section 10.133 was previously codified as § 1133 and was amended to conform with the Code numbering & format.

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§ 10.134. Exemption of National Development Bank of Palau and Pacific Islands Development Bank.

The National Development Bank of Palau (“NDBP”) and the Pacific Islands Development Bank (“PIDB”) shall be exempt from the provisions of § 1003(b), provided the NDBP and the PIDB do not take deposits or issue any bond or any other debt securities to the public in the Republic of Palau. The Commission may, by rules and regulations, provide for similar exemption to other development banks whose purpose is that of providing aid and assistance pursuant to a bilateral or multi-lateral agreement and which do not take deposits or issue any bond or any other debt securities to the public.

Source

RPPL 6-3 § 2[80], modified. Amended in its entirety by RPPL 7-41 § 2[81].

Notes

Section 10.134 was previously codified as § 1134 and was amended to conform with the Code numbering & format.

§ 10.135. Exemption.

Any entity engaging in the provision of banking or financial services and thereby required to be licensed by the Financial Institutions Commission pursuant to this chapter is exempt from the requirements of the Foreign Investment Act, 28 PNC Chapter 1.

Source

RPPL 6-3 § 2[81], modified.

Notes

Section 10.135 was previously codified as § 1135 and was amended to conform with the Code numbering & format.

§ 10.136. Fraudulent conveyance.

(a) Any administrator or related person who, with the intent to defraud his or her creditors, or to diminish the assets available to his or her creditors for payment of his or her debts, removes his or her property or effects out of Palau, or who sells,

conveys, assigns, or conceals his or her property, with the intent to defraud, delay, or hinder depositors or other creditors of a financial institution of their rights, claims, or demands, whether a litigation claim is pending or reduced to judgment or not, has committed the crime of "Fraudulent Conveyance", which is punishable by a fine not to exceed two (2) times the value of the property transferred, or imprisonment not to exceed five (5) years, or both.

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(b) A transfer of property by an administrator or related person (as defined in § 1077) for less than reasonably equivalent consideration on or within one (1) year before or after a receivership proceeding is initiated under this chapter, shall be presumed fraudulent for the purposes of criminal and civil proceedings to avoid or revoke such transfers, or to obtain money judgment for the value of the property transferred.

(c) Any property so transferred under subsections (a) and (b) of this section, or found to be a fraudulent conveyance under other applicable laws of the Republic of Palau, shall be recoverable by or on behalf of the receiver from the transferee, except that a good faith transferee without notice of the claims of any creditors or the receiver has a lien on the property to the then extent of the current value of any consideration paid therefore. In lieu of recovery of the transferred property, or where the value of the property transferred has declined in value after the date of the transfer or there has been a subsequent transfer, judgment may be entered against the transferee for the reasonable value of the property so transferred on the date of the transfer.

(d) This section shall apply to all receiverships in effect at the effective date of this chapter with regards to civil remedies for the recovery of property or the value thereof only; and shall not apply to all receiverships in effect at the effective date of this chapter with regards to criminal matters.

(e) This section shall be deemed to be in addition to any other remedies available to creditors or the receiver under the common law of the Republic of Palau, and shall not be interpreted to preempt or otherwise invalidate other remedies or claims the receiver or creditors may have with respect to such transfers.

Source

RPPL 7-41 § 2[83], modified.