

EXECUTIVE ORDER NO. 134

*To Establish Internal Budget and Finance Procedures
Pursuant to the Compact of Free Association*

WHEREAS, the Compact of Free Association was implemented on October 1, 1994, between the Government of the Republic of Palau and the Government of the United States; and

WHEREAS, the Compact of Free Association and its subsidiary agreements set forth specific procedures and conditions for the use and disbursement of Compact related funds; and

WHEREAS, there is a need to comply with the conditions and restrictions attached to the Compact funds;

WHEREAS, there is a need for careful economic analysis and planning in order to ensure that such funds are appropriately used;

NOW, THEREFORE, by virtue of the authority vested in me as President of the Republic of Palau, pursuant to the Constitution and applicable laws of the Republic, it is hereby ordered that beginning on the official date of Compact implementation, all Compact funds shall be disbursed and used in accordance with the attached budget and finance procedures, the Compact of Free Association and its subsidiary agreements.

IN WITNESS WHEREOF I have hereunder set my hand and affixed my official seal this 7th day of October, 1994, in the State of Koror, Republic of Palau.

Kuniwo Nakamura
President
Republic of Palau

COMPACT BUDGET AND FINANCE PROCEDURES

1. Definitions.

The following definitions shall apply to these procedures:

- (1) “Annual report” means the annual report of the Republic of Palau to the U S Government in compliance with Section 231(b) of the Compact
- (2) “Capital account” means the capital account funding defined in Sections 212(b) and 461(h) of the Compact and as further defined and described in the Fiscal Procedures Agreement and this Act
- (3) “Capital account program funds” means any program account funds other than Section 212(b) funds to be programmed for capital account use, as defined in Article 11, Section 3(e), of the Fiscal Procedures Agreement; such funds are to be obligated for the construction or major repair of capital infrastructure or public and private sector projects
- (4) “Compact” means the Compact of Free Association between the Government of the Republic of Palau and the U S Government signed on January 10, 1986, and any subsidiary agreements pertaining thereto
- (5) “Current account” means program funds for current account funding as defined in Section 461(i) of the Compact and as further defined and described in the Fiscal Procedures Agreement and this Order; such funds are to be obligated for recurring operational activities
- (6) “Federal Programs and Services Agreement” means the “Federal Programs and Services Agreement Concluded Pursuant to Article II of Title Two and Section 232 of the Compact of Free Association” signed on January 10, 1986, by the Government of the Republic of Palau and the U.S. Government.
- (7) “Fiscal Procedures Agreement” means the “Agreement Concerning Procedures for the Implementation of United States Economic Assistance, Programs and Services Provided in the Compact of Free Association,” signed on December 2, 1987 by the Government of the Republic of Palau and the U.S. Government.
- (8) “Program account” means the eleven Compact fund types as set forth in Compact Sections 211(a),211(b),211(c),211(d), 211(e),211(f), 212(b), 213, 215, 221(b)(1), and 221(b)(2).
- (9) “Trust Fund” means the fund created by Section 211(f) of the Compact

2. Compact Funds.

(1) There are hereby created within the central financial management system, “Compact Funds” to be administered by and under the authority of the President or his designee

(2) The purpose of the Compact Funds is to separately account for funds received from the U.S. Government by the Republic of Palau from the time of receipt of such Compact funding and until such funding is exhausted At a minimum, separate Funds shall be maintained for current account, capital account, and the trust fund financed by Compact financial assistance

(3) The accounting records and accounts maintained for the Funds shall be in sufficient detail to provide a full and complete accounting of Compact funds, including current account, capital account, and as may be required, program account funds The Fund shall also account for funds designated for investment, investment income earned, and investment expenses assessed related to such earnings The Minister of Administration shall report on the status of the account concurrent with the financial reports submitted in accordance with Section 8, Minister of Administration - Internal Accounting and Reporting Duties.

(4) Upon receipt of funds from the U S Government, the accounting records of the Compact Fund shall be updated to reflect the amount of Compact funds received The President or his designee shall obligate and transfer to the appropriate custodian bank for investment purposes, all funds available for investment

(5) Concurrently with subsection (4) of this section, the President or his designee shall ensure that the Compact funds approved for transfer to the Republic of Palau from the U S Government are timely received and properly recorded in the accounts of the Compact Funds.

3. Apportionment and Allocation Process

(1) No later than 30 days prior to first day of each fiscal year, the President or his designee will prepare a quarterly apportionment of current account and current account program funds and specify the allocation for capital account funds for each quarter of the upcoming fiscal year, based on the appropriated Unified National Budget.

(2) The apportionment for the current account and current account program funds will be on a quarterly basis, with each quarterly share comprising at least twenty percent and not more than thirty percent of the total amount available for the fiscal year in question, as specified in Article II, Section 2(c), of the Fiscal Procedures Agreement

(3) The President will certify to the U S Government no later than 30 days prior to the first day of each fiscal year the amount of funds in the current account and the capital account requested for that fiscal year and the quarterly allocation for such funds as specified in Article II, Section 1(b), of the Fiscal Procedures Agreement If the Unified National Budget appropriation is not enacted 31 or more days prior to the first day of each

fiscal year, the President in his overall certification to the U.S. Government will assume a 30/30/20/20 percentage apportionment schedule for the National Government for the upcoming fiscal year

(4) The certification by the President to the U S Government will include a designation of a bank or commercial financial institution into which the U S Government will transfer Compact funds into the titled and numbered account(s) of the Republic of Palau

(5) The quarterly apportionment schedule cited in subsection (1) of this section may be modified during a given fiscal year by the submission to the President of a quarterly apportionment schedule change request; provided, that the apportionment after the change is in accordance with subsection (2) of this section In accordance with Article II, Section 2(c), of the Fiscal Procedures Agreement, revision in the quarterly apportionment schedule must be made not less than one fiscal quarter in advance of the quarter for which the revised apportionment is to be effective The Minister of Administration will issue an allotment incorporating the change for the quarter in which the change is to be effective.

4. Allotment of Funds and Project Control Documents

(1) “Allotment” means the delegation of authority to a person to create legally enforceable financial obligations in accordance with applicable law and the Compact and its related agreements, within the limits specified in an appropriations act.

(2) The authority to make allotments of Compact funds shall be vested in the President or his designee

(3) The President will issue separate allotments for:

- (a) capital account funds allotments may be made in the aggregate or on a project basis as requested at the beginning of the fiscal year or during the fiscal year for projects which (i) have been appropriated, (ii) are supported by a project control document, and (iii) are within the scope of the Compact and its related agreements
- (b) all programs or projects for which Compact funds were appropriated by the Olbiil Era Kelulau

(4) The project control document (or its subsequent amendments) shall contain information related to the implementation of the project, anticipated or actual contractual terms with the contractor, if selected, and the name of the inspector assigned to certify progress payments All project control documents shall be reviewed by the Minister of Administration for compliance with the terms of the Compact, its related agreements, and applicable appropriation laws prior to allotment of the funds specified in the project control document

(5) The Minister of Administration shall maintain an allotment control ledger which shall

at all times, have recorded and account for all outstanding appropriations and their allotted and un-allotted balances

5. Obligations

(1) For the purpose of this Executive Order, the term “obligation” means legal liability for salaries and wages, travel, contractual services, contracts entered into for the purchase of supplies and equipment, construction, and land, as well as loans or other commitments requiring payment of money.

(2) No officer or employee of any Government of the Republic of Palau, or allottee of funds shall make or otherwise authorize an expenditure from, or create or authorize an obligation pursuant to, any allotment of Compact funds:

- (a) without prior written approval of the President;
- (b) in advance of availability of funds by allotment;
- (c) for purposes other than those for which an allotment has been made; or
- (d) in excess of the sum made available by Compact fund allotment.

(3) The Minister of Administration will immediately report to the President any violation of subsection (2) of this section

6. Draw-down Procedures - Cash Management

(1) No later than August 15th of each fiscal year, the Minister of Administration will submit to the President an annual cash flow schedule for the upcoming fiscal year, detailing by month the anticipated current and capital cash disbursement requirements of each Fund of the National Government based on appropriated budgets, payroll information, additional data from government officials, and anticipated project contract pay-out schedules, and the anticipated cash collections from all available sources

(2) Cash draw-down shall be based on the following procedures:

- (a) Current account: Current account and current account program funds may be drawn down on a monthly reimbursement basis, on a monthly advance cash needs basis, or on a quarterly advance basis.
- (b) Capital account: Capital account funds may be drawn down on a monthly reimbursement basis, on a monthly advance cash needs basis, or on an advance basis for valid obligations.

7. Close-out of Capital Project Accounts

The Minister of Resources and Development or his designee will close out Compact capital project accounts upon project completion and ensure that no obligation of funds

occurs after project completion. The close-out process will be conducted on a timely basis. The close-out process shall include, but not be limited to, a final inspection and certification of same. The Minister of Administration will assist in the close-out procedure of capital accounts after three months following project completion, if such close-out has not been conducted by the Minister of Resources and Development or his designee. Unused spending authority resulting from project close-out will revert to the un-allotted capital account and shall be available for re-allotment after appropriation for valid capital account purposes.

8. Minister of Administration Internal Accounting and Reporting Duties.

- (1) The Minister of Administration shall have access to all financial records for all Compact funds of the National Government and for any Compact funds being utilized by the State Governments or other governmental or non-governmental entities of the Republic of Palau.
- (2) The Minister of Administration shall develop accounting procedures and maintain accounting records of all Compact funds. The Minister of Administration shall continuously review accounting and financial reporting systems for Compact funds of Palau and make recommendations for their improvement
- (3) The financial reporting systems of the National Government shall provide full disclosure of the financial positions and results of operations of each Compact program account fund in accordance with a uniform and standardized format set forth by the Minister of Administration. The financial information generated from these systems shall include, but not be limited to, all pertinent information needed to prepare comprehensive annual financial reports as required by Article III of the Fiscal Procedures Agreement and Section 231(b) of the Compact.
- (4) The Minister of Administration will submit to the President, the presiding officers of the Olbiil Era Kelulau, no later than 30 days of the close of each quarter, or special reports as requested by the President, the following reports:

 - (a) combined balance sheet, including all fund types and account groups;
 - (b) statement of actual and estimated revenues; and
 - (c) statement of encumbrances and expenditures compared with budget allotment.
- (5) No later than January 1 of each year, the Minister of Administration will submit a comprehensive annual financial report to the President providing a full accounting of each Olbiil Era Kelulau appropriation, including obligations and expenditures, for all types of funds available to the National Government, as of the end of the prior fiscal year. Such reports will conform with the standards established by the Minister of Administration.

9. Investment Authority

(1) All Compact funds that are invested shall be managed under the overall supervision of the President or his designee, utilizing advice offered by the Trust Fund Board of Trustees and any investment consultants or advisers, where applicable.

(2) The President or his designee shall maintain such accounting systems and records as necessary to account for the investment of Compact funds. Such accounts and accounting records shall also include, but not be limited to, records supporting the investment earnings and investment expenses incurred related to such investment earnings.

(3) The President or his designee will ensure that no Compact Section 221(b)(1) program account funds are obligated or transferred for investment purposes or held in interest bearing instruments, as required by the Federal Programs and Services Agreement, Article X, Section 5(b)

10. Annual Directive on Investment Policy

(1) The Board of Trustees, or other investment advisers, shall recommend an annual directive on investment policy to the President no later than June 30 of each year for the upcoming fiscal year, providing investment policy guidelines on all Compact and other funds being invested.

(2) The goal of the investment policy shall be to maximize investment returns while maintaining adequate liquidity and high standards of safety and quality of assets, and giving due consideration to the need to stimulate the Nation's economy.

11. Investments

(1) Any public or private sector investment counsel selected and contracted with by the Republic of Palau to manage part of or the entire portfolio of investments shall be a fiduciary with respect to services rendered. Such fiduciary relationship shall be specified in a written agreement between the investment counsel and the President.

(2) Funds invested may include all Compact and other funds prior to conversion to cash in checking accounts, pursuant to the terms of the Compact.

(3) The Minister of Administration will maintain investment control records which maintain separate accountability for each Compact program fund invested.

(4) Compact funds may be commingled for investment purposes, however the funds and the income derived shall remain segregated for accounting and appropriation purposes.

(5) Net earnings, including interest earned, capital gains, and appreciation on invested funds will be credited to the account of each Compact program fund based on the

proportion and duration of the funds in the investment portfolio “Net earnings” shall be defined as the excess of interest earned, capital gains, or appreciation over costs of administering the investments Costs of administering the investments include all fees and charges assessed by custodian banks and investment managers. “Net losses” include, but are not limited to, capital losses on, or depreciation of, investments. Net losses on invested funds will be debited to the account of each Compact program fund based on the proportion and duration of the funds in the investment portfolio.

12. Report on Investment Operations

The Minister of Administration and the COFA Board of Trustees shall issue a report twice annually, once on January 1st and again on July 1st, on its operations during the prior six months to the President and the Presiding Officers of the Olbiil Era Kelulau The report shall include:

- (1) A description of the scope of technical assistance and advice on investment operations provided to the National Government in the prior fiscal year; and
- (2) A comprehensive report on the investment activity including net earnings and the cost of operations.

13. Annual Report of the President to the U.S. Government

No later than April 1 of each year the President will submit the “Annual Report to the U.S. Government” to the U S President and U.S. Congress, in accordance with Article III, Section 3, of the Fiscal Procedures Agreement and Section 231(b) of the Compact.

14. Compliance

(1) If the President or his designee determines that any official is not acting in compliance with one or more provisions of the Compact or its related agreements, these procedures, or rules and regulations promulgated pursuant to these procedures, he/she shall confer with the appropriate official in an effort to remedy the effects of such noncompliance and to ensure future compliance with such provisions. The President or his designee may withhold or withdraw allotment of Compact financial assistance until such time as such official has taken adequate steps to comply with such provisions, and may take appropriate personnel actions as are allowed by law to discipline or terminate the employment of employees in cases of malfeasance or misfeasance.

15. Effective Date and Approval.

These procedures are hereby approved and shall become effective on the official date of implementation of the Compact of Free Association This executive order can be amended from time to time in writing.