

EXECUTIVE ORDER NUMBER 173

[repealed by Executive Order 187]

Establishing a National Banking Review Commission

WHEREAS it has come to the attention of the President that interest in the Republic of Palau as a financial center is active and growing; and

WHEREAS such interest in Palau carries with it the possibility for substantial new business, industry, and revenues for the Republic; and

WHEREAS the President has repeatedly endorsed the idea of responsibly exploring and appropriately exploiting all opportunities to expand and diversify business, industry, and sources of revenues in the Republic; and

WHEREAS, consistent with the President's policy of evaluating new opportunities for the Republic, the President suggested the formation of a committee with representatives of the Olbiil Era Kelulau in order to carefully consider issues raised in recently vetoed legislation; and

WHEREAS the development of Palau as a financial center also carries with it great risk for illicit manipulation and criminal abuses; and

WHEREAS the potential for abuses mandates that the coordinate branches of the government work together to avoid the ills which have led the President to repeatedly veto preliminary legislative efforts at opening the Republic of Palau to offshore banking and corporations; and

WHEREAS the President nonetheless remains committed to exploring ways to safely and responsibly increase Palau's stature as an investment and financial hub and to diversify Palau's economic base; and

WHEREAS numerous existing and potential trading partners, including most recently the United States, have expressed interest in assisting Palau in developing a system which will allow the Republic to reap the benefits of the growing interest in Palau as an investment and financial center while preventing the development of Palau as a safe harbor for international financial crimes; and

WHEREAS the existing regulation of the banking industry in the Republic of Palau is woefully deficient in regards to preventing improper activities and protecting depositors and investors; and

WHEREAS the regulation of the banking industry in the Republic of Palau must be thoroughly reviewed, substantially strengthened, and made consistent with the demands and challenges of international commerce in the new millennium; and

WHEREAS existing financial institutions in the Republic of Palau must be examined to

ensure that undesirable, unsound, and illicit practices do not arise in Palau and, to the extent they appear in Palau, are immediately ended; and

WHEREAS failure to effectively police the banking industry in Palau threatens to make Palau an outcast from the international financial community and render it extremely difficult, if not impossible, to attract bona fide investors and international support for the Republic's commercial development;

NOW, THEREFORE, pursuant to the Constitution and laws of the Republic of Palau, I hereby order the creation of a National Banking Review Commission to have the powers, duties, and characteristics described below.

I. Composition and Organization

The National Banking Review Commission (hereinafter "Commission") shall consist of the following:

the Attorney General (or her designee), who shall serve as Chairman of the Commission, two members to be named by the President;
two members to be named by the Council of Chiefs;
two members to be named by the Speaker of the House of Delegates;
two members to be named by the President of the Senate;
two members to be named by the Chairman of the Foreign Investment Board; and
one member to be named by the Chairman of the Chamber of Commerce.

The members of the Commission shall be named no later than five days after the entry of this Order. The President shall convene the first meeting of the Commission no later than ten days after entry of this Order. At the first meeting, the members of the Commission shall name such officers other than Chairperson as the members deem appropriate, establish procedures to be followed by the Commission in fulfilling its duties, set the number and/or frequency of meetings to be held by the Commission, and to take such other organizational steps as the Commission deems necessary or appropriate.

2. Withdrawal, Removal and Replacement of Members

The importance of the tasks assigned to the Commission and the need for input from every entity represented on the Commission require that the composition remain constant. Therefore, upon the withdrawal of any member from the Commission, the entity which named the member to the Commission shall name a replacement for the withdrawing member no later than ten days following such withdrawal. All members serve at the will of the entity which named them and may be removed and replaced by such entity at any time and for any reason. Such replacement shall be made within ten days of the removal by the sponsoring entity. The membership of the Commission shall have no authority to alter its composition by removal of any of its members: members may only be removed by the sponsoring entity.

3. Compensation

The members of the Commission shall not be compensated for their service on the Commission. It is expected that the sponsoring organization shall assume responsibility for the reasonable expenses incurred in the course of their service. Upon application by the Commission or an organization sponsoring a member of the Commission, the President shall seek appropriations from the Olbiil Era Kelulau to defray the reasonable expenses incurred by the Commission and its members in the course of performing the tasks assigned herein.

4. Powers, Authority and Responsibilities

a. Legislative Review and Analysis

The Commission shall undertake a comprehensive review of existing laws and regulations concerning the banking industry in Palau. The Commission shall undertake a comprehensive review of laws and regulations, including model laws, of other jurisdictions concerning the banking industry. The Commission shall familiarize itself with any international treaties, conventions, protocols, or other formal agreements concerning the regulation of banks and/or banking practices. The Commission shall prepare an analysis of the various legislative regimes concerning the banking industry and evaluate such systems. The elements to be addressed by the Commission in evaluating banking laws and regulations shall include, but not be limited to, the following:

- i. the structure of the laws and regulations (what bodies are charged with enforcement, interpretation, and modification of the banking regulatory systems and where do such bodies fit in the government, i.e., in which branch and at what level in the governmental hierarchy);
- ii. procedure (how are the laws and regulations enforced and how is the banking system monitored for compliance with the laws and regulations);
- iii. enforcement mechanisms (what tools are used to compel compliance with the laws and regulations);
- iv. privacy and confidentiality (how is the right to privacy balanced with the government's need for access to information for legitimate law enforcement purposes); and
- v. safety measures (what laws and regulations are in place to ensure that banking institutions are adequately capitalized and qualified to operate, to ensure that banking institutions follow sound financial practices, to protect or insure against the failure of banking institutions, and generally to ensure public confidence in the banking system).

The Commission shall formulate legislative recommendations based on its review and analysis of domestic and foreign laws and regulations concerning the banking industry.

b. Review of the Existing Banking Industry in Palau

The Commission shall undertake a comprehensive examination of all entities currently offering banking services in the Republic of Palau. The examination shall seek to determine the soundness and legitimacy of such entities by looking at the following aspects, *inter alia*: the identity of the principals of the entity; the identity of any parent company of the entity; the capitalization, deposits, assets, and liabilities of the entity (and any parent company thereof, as appropriate); the services offered by the entity; the general identity of the typical clientele of the entity (individuals or corporations, foreign or domestic); the ranking or rating of the entity, if any such ranking or rating has been made, by Standard and Poor or any similar financial analyst; the status of the entity with respect to insurance; and the membership, participation, license or certification of the entity in or by any banking regulatory or evaluative body. To the extent it deems it appropriate or necessary to do so, the Commission may request either the Attorney General or the Olbiil Era Kelulau to use their respective subpoena powers to assist in obtaining information regarding banking operations in Palau. The Attorney General is hereby specifically authorized to issue subpoenas in aid of the Commission's pursuit of information regarding banking operations in Palau. The Olbiil Era Kelulau is encouraged to provide all appropriate and necessary support for the fact-finding obligations of the Commission.

c. Employment of Staff and Experts

The Commission may not employ any staff or experts. Each sponsoring organization is expected to support the work of the Commission with necessary materials, meeting/office space, and clerical, technical, and expert assistance from its own resources. The various component bodies of the Executive Branch are hereby ordered to provide such support as is appropriate and necessary pursuant to the immediately preceding sentence. Upon application by the Commission or an organization sponsoring a member of the Commission, the President shall seek appropriations from the Olbiil Era Kelulau to fund contracts with outside experts, including accountants and auditors, to complete the tasks assigned herein. Upon enactment and signing of such appropriations, the Commission may enter into agreements, subject to normal procurement processes, with outside experts to assist in completing the tasks assigned herein.

d. Consultation with Foreign Jurisdictions, Intergovernmental Organizations (IGOs), and Nongovernmental Organizations (NGOs)

The Commission is authorized and encouraged to consult with foreign jurisdictions, intergovernmental organizations, and nongovernmental organizations in performing the tasks assigned herein.

e. Cooperation of National Governmental Bodies

All branches of the national government are urged to cooperate with the Commission and to respond favorably to any requests for assistance from the Commission. All elements of the Executive Branch are hereby ordered to cooperate with the Commission and to respond favorably to any reasonable requests for assistance from the Commission.

f. Reports of the Commission

Within thirty days of the organizational meeting of the members of the Commission, the Commission shall issue to the President and the leadership of the Olbiil Era Kelulau a written

preliminary assessment of the state of the laws of the Republic of Palau and of other jurisdictions concerning banking operations, as well as any international treaties, conventions, protocols, or other formal agreements concerning the regulation of banks and/or banking practices. The assessment shall include specific identification of the comparative strengths and weaknesses of such laws, gaps in the existing laws of the Republic, and recommendations for legislation or regulations to address those shortcomings in Palau's banking laws. The assessment shall include recommendations as to the appropriate structure and body for ongoing monitoring of the banking industry and related operations in the Republic of Palau. The Commission will make itself available to receive questions and comments regarding the assessment from the President and the leadership of the Olbiil Era Kelulau.

Within sixty days of the organizational meeting of the members of the Commission, the Commission shall issue to the President a report of its preliminary findings concerning existing banking operations in Palau, including a report of the progress of any inquiries still being conducted as of the date of the report.

Within ninety days of the organizational meeting of the members of the Commission, the Commission shall issue its final assessment of the state of the laws concerning banking operations. The final assessment shall address the same issues as the initial assessment and further address any concerns raised regarding the preliminary assessment. The final assessment shall incorporate (or explain why the Commission chose not to incorporate) the comments and suggestions of the President and the leadership of the Olbiil Era Kelulau. The final assessment shall include specific suggestions for legislation and regulations to control banking operations in the Republic of Palau. The Commission will make itself available to answer any questions the President or the leadership of the Olbiil Era Kelulau might have concerning the final assessment.

5. Term

The Commission shall be dissolved one hundred fifty days after the organizational meeting of the members of the Commission unless either the President or the leadership of the Olbiil Era Kelulau declares that further service is needed or is likely to be needed. In the event the Commission is required by either the President or the leadership of the Olbiil Era Kelulau to remain constituted, the Commission shall confer with the relevant entity every two weeks to determine whether continued service is required and shall dissolve as soon as it receives assurances that further service is not required.

SO ORDERED THIS 24th DAY OF DECEMBER, 1999

Kuniwo Nakamura
President of the Republic of Palau