

## ***Palau Extradition and Transfer Act of 2001***

### **THE EXTRADITION AND TRANSFER ACT OF 2001**

SIXTH OLBIL ERA KELULAU

Third Special Session, June 2001 RPPL No. \_\_\_\_\_

(Intro. as H. B. No. 6-72-3S,

HD1, SD7)

AN ACT

To amend PNC Title 18 by adding a new chapter to facilitate extradition, and for other related purposes.

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THE PEOPLE OF PALAU REPRESENTED IN THE OLBIIL ERA KELULAU DO ENACT AS FOLLOWS:

Section 1. Amendment. Title 18 of the Palau National Code is hereby amended by the addition of a new Chapter 10.1 to provide as follows:

## **"CHAPTER 10.1 THE EXTRADITION AND TRANSFER ACT OF 2001**

### **SUBCHAPTER I**

#### **GENERAL PROVISIONS**

##### **Section 1. Short title**

This Act shall be known and may be cited as the 'Extradition and Transfer Act of 2001.'

**Section 2. Purpose.**

The purposes of this Act are: to facilitate the procedures for extradition of persons from a foreign state to the Republic of Palau, and vice versa; to promote the rehabilitation and effective reintegration of criminal offenders into society by transferring convicted citizens to their home countries to serve a criminal sentence; to declare that the Republic shall have an obligation to extradite any person who has committed an extraditable offense in an extradition country, no matter what their nationality or citizenship, where the requirements of this Act have been met, and where there is no valid impediment to extradition under this Act; to promote mutual cooperation in law enforcement in the Pacific region and internationally to bring fugitives to justice; and to declare that to that end, this Act should be liberally construed, together with the following related legislation: the Mutual Assistance in Criminal Matters Act; the Money Laundering and Proceeds of Crime Act; and the Foreign Evidence Act.

**Section 3. Supersession.**

This Act shall not supersede the extradition provisions of the Compact of Free Association, whose provisions shall be deemed an extradition treaty for the purposes of this Act. Any extradition treaty or international agreement to which the Republic was a party before the effective date of this Act remains in force and shall be deemed an extradition treaty for the purposes of this Act. In the case of conflict, the provisions of the extradition treaty shall take precedence over the provisions of this Act.

**Section 4. Definitions.**

In this Act:

- (a) "Attorney General" means the Attorney General of the Republic of Palau;
- (b) "Comity Country" means a foreign state granted or seeking a courtesy or a special privilege to be granted with respect to extradition or the transfer of a convicted person notwithstanding the fact that such foreign state does not otherwise qualify under the Act as an extradition country because of its status as a Forum country or a treaty country;
- (c) "Document" means any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system, or other device, and any record of information, and includes, but is not limited to: anything on which there is writing, marks, figures, symbols, or perforations having meaning for persons qualified to interpret them; anything from which sounds, images or writings can be produced, with or without the aid of anything else; a map, plan, drawing, photograph or similar thing;
- (d) "Extradition country" means any treaty country with which the Republic has entered into an extradition treaty;
- (e) "Extradition request" means a written petition made by one country to another country for the surrender of a particular person for purposes of prosecution or punishment for a criminal offense;
- (f) "Extradition treaty" means a written pact, protocol, agreement, convention, or covenant, entered into or ratified by the Republic that relates wholly or partly to the surrender of persons accused or convicted of criminal offenses;
- (g) "Foreign escort officer" means an official representative of the foreign state to which a person is to be surrendered or transferred for service of the person's sentence, conditional sentence, or conditional release;

- (h) "Foreign state" means any country other than the Republic and every constituent part of such country which administers its own laws relating to criminal offenses;
- (i) "Forum country" means a member of the Pacific Islands Forum;
- (j) "Interpol" means the International Criminal Police Organization;
- (k) "Judge" means a person who has been duly appointed as a judge or justice of the Supreme Court of the Republic, unless otherwise noted;
- (l) "Law enforcement officer" means a member of the Bureau of Public Safety, Ministry of Justice of the Republic of Palau;
- (m) "Person" means and includes any natural or legal person sought for extradition;
- (n) "Political offense" means any charge or conviction based on a person's political beliefs or affiliation where the conduct involved does not otherwise constitute a violation of that country's criminal laws.;
- (o) "Prison" means any place for the confinement or custody in the course of the administration of justice, and includes a jail, police cell, or any place where the personal liberty of a person to voluntarily depart is restricted;
- (p) "Proceeding" or "proceedings" means any procedure conducted by or under the supervision of an authorized judicial officer of any country, and includes an inquiry, investigation, or preliminary or final determination of facts;
- (q) "Proceeds of crime" means any property derived or realized directly or indirectly from a serious offense or an extraditable offense and includes, on a proportional basis, property into which any property derived or realized directly from the offense was later successively converted, transformed, or intermingled, as well as income, capital, or other economic gains derived or realized from such property at any time since the offense;
- (r) "Property" means currency and all other real or personal property of every description, wherever situated, whether tangible or intangible, and includes an interest in any such property but does not include any clan, lineage, or family land located in the Republic, nor any interest held by a legitimate bona fide purchaser or owner of property, real or otherwise, without notice of any illegal interest, in such real property located in the Republic;
- (s) "Requesting country" means a foreign state that is seeking the surrender of a person for purposes of prosecution or punishment for a criminal offense allegedly committed in such foreign state;
- (t) "Serious offense" means a violation of: any law of the Republic which is a criminal offense punishable by a term of imprisonment for more than one year; or a criminal law of the requesting country, in relation to acts or omissions, which had they occurred in Republic would have constituted a criminal offense punishable by a term of imprisonment for more than one year;
- (u) "Supreme Court" means the Supreme Court of the Republic and all its divisions;
- (v) "Surrender" means the act by which public authorities deliver a person charged with or convicted of a crime and who is found within their jurisdiction to the authorities within whose jurisdiction it is alleged that the crime was committed;

(w) "Surrender warrant" means an official authorization: issued by a judge ordering the surrender of a person to a requesting country; requiring any person having custody of the person to relinquish custody to the officer possessing the warrant; authorizing handing the person over to the custody of a foreign escort officer; and authorizing the foreign escort officer to transport the person to the requesting country for purposes of prosecution and punishment for a criminal offense;

(x) "Tainted property" means property used in, or in connection with, the commission of a serious or extraditable offense or the proceeds of crime;

(y) "Treaty country" means a foreign state with which the Republic has entered into an extradition treaty, and which is listed in regulations promulgated under this Act;

(z) "Writing" includes facsimiles, electronic mail, and any other means of communication that is capable of being reproduced in printed form.

(aa) A reference in this Act to the law of the Republic or any foreign state or country, includes the law of any part of the Republic or any part of that foreign state or country.

### **Section 5. Extraditable offenses.**

(a) An extraditable offense is an offense which occurred in the requesting country and is or would be a criminal offense under the laws of both the requesting country and the Republic or the receiving country and the transferring country, or their political subdivisions, punishable by imprisonment or other deprivation of liberty for over one year.

(b) In determining whether an offense is an extraditable offense under this Act, terminology and categorization are not dispositive, and the totality of the acts or omissions alleged shall be considered in determining the constituent elements of the offense. Any part of such act, failure to act, or omission may be taken into account.

(c) Where there is no statutory penalty, the level of penalty that can be imposed for the offense by any court shall be taken into account.

(d) An offense may be an extraditable offense if it relates to taxation, customs duties, or other revenue matters or relating to foreign exchange control of a foreign state even if the Republic does not impose a duty, tax, tariff, or control of that kind, provided such offense would not be unconstitutional under the laws of the Republic.

### **Section 6. Extradition objections.**

An extradition objection arises automatically where:

(a) the offense is a political offense;

(b) substantial grounds suggest that the prosecution or punishment is due to race, religion, nationality, political opinion or affiliation, gender, or status, or that the proceedings are prejudiced because of any of these factors;

(c) the offense arises under a foreign state's military law but is not a criminal offense in the Republic;

- (d) the person has been convicted of the offense in the Republic and has not escaped or breached any condition of release;
- (e) the person is immune from prosecution or punishment due to lapse of time, amnesty, or any other reason under the requesting country's laws;
- (f) the person has been acquitted, pardoned, or duly punished for the offenses, in the Republic or the foreign state;
- (g) judgment was entered in the person's absence, and the requesting country's law does not entitle the person to raise any defenses upon his or her return;
- (h) a prosecution for the offense is pending in the Republic;
- (i) the offense was not committed in the requesting country and the Republic has no jurisdiction over that offense committed in similar circumstances outside of the Republic;
- (j) the offense was committed, even partially, within the Republic, and the Attorney General confirms that prosecution will be instituted;
- (k) the offense is punishable by death, and there are insufficient assurances that the death penalty will not be imposed or carried out;
- (l) the person is likely to be tried or sentenced by a court not authorized by law;
- (m) the person is likely to be subjected to torture or cruel and inhumane treatment or punishment, including inhumane prison conditions. Conditions in countries that have acceded to the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment of Punishment adopted on December 10, 1984, or the International Covenant on Civil and Political Rights, adopted on December 16, 1966, are presumed humane, but can be rebutted by clear and convincing evidence.
- (n) If the requesting government is either authoritarian in nature or non-democratic in form, no citizen of Palau or person of Palauan ancestry shall be extradited to that country.
- (o) If the offense is punishable by death, no citizen of Palau or person of Palauan ancestry shall be extradited to that country.

## **SUBCHAPTER II**

### **EXTRADITION OF PERSONS TO FOREIGN STATES**

#### **Section 7. Obligation to extradite.**

- (a) When surrender of a person who is not a Palauan citizen or national or of Palauan ancestry is sought for an extraditable offense and where the requirements of this Act have been satisfied and no valid and legally sustainable extradition objections preclude surrender, the Republic has an obligation to extradite the person.

(b) Neither the Republic nor any extradition country shall be bound to extradite its own citizens or nationals, but may grant extradition if, in the discretion of the court, after notice to the party sought to be extradited and a hearing, extradition is deemed proper. If the requested government denies extradition solely on the basis of citizenship or nationality, it shall submit the case to its competent authorities for purposes of prosecution.

(c) This chapter shall be liberally construed to effect the purposes of this Act.

### **Section 8. Authority of the Minister of Justice.**

The Minister of Justice or his or her designee shall be authorized to:

- (a) receive extradition requests directly from foreign states or Interpol;
- (b) determine, pursuant to this Act, whether and what action to take on an extradition request;
- (c) determine whether the requesting country is an extradition country, and if not, whether to designate or certify it as such;
- (d) impose conditions on the requesting country for the treatment of the person;
- (e) apply to the Supreme Court for warrants of arrest, provisional arrest, surrender, and for applications for re-extradition;
- (f) appear at hearings authorized by this Act on behalf of a requesting country;
- (g) institute extradition proceedings;
- (h) take any action authorized in this section on behalf of a requesting country, upon receiving notice of an extradition request or an intent to make an extradition request in the immediate future, and the person is believed to be physically present or about to enter the Republic in the foreseeable future;
- (i) take any other legal action deemed necessary in furtherance of the purposes of this Act.

### **Section 9. Extradition requests.**

- (a) Requests shall be made in writing, in the English language, and be accompanied by the necessary supporting documents.
- (b) Upon receipt of the extradition request, the Minister of Justice or his or her designee shall notify the President, review and consider the request, determine whether the request meets this Act's requirements, and promptly communicate the determination to the requesting country, providing a written statement of any deficiencies in the request.
- (c) The Minister of Justice or his or her designee shall determine whether to institute extradition proceedings, but shall not do so unless:
  - (1) the requesting country has issued an arrest warrant for the extraditable offense;
  - (2) the person named in the warrant is physically present or about to enter the Republic in the foreseeable future;



- (3) the requesting country is an extradition country;
- (4) the requesting country has produced or will produce in the immediate future the necessary supporting documents;
- (5) no extradition objections or other law precludes the person's surrender;
- (6) no other valid and legally justifiable cause exists to preclude surrender of the person.

(d) Where the extradition request meets some but not all of this Act's requirements when it is made, the Minister of Justice or his or her designee may provisionally institute extradition proceedings and take any necessary action authorized in Section 8 provided that the Minister of Justice or his or her designee is satisfied that any defect or deficiency is readily curable and that the requesting country will immediately act to cure such defect or deficiency.

(e) The President or his or her designee may refuse any request from a country that does not offer substantially similar privileges to the Republic.

### **Section 10. Multiple extradition requests.**

(a) When the Minister of Justice or his or her designee concurrently receives two or more extradition requests for the same person, the Minister of Justice or his or her designee shall have the discretion to decide the order in which to consider the requests.

(b) The Minister of Justice or his or her designee shall notify each requesting country of the multiple requests and shall communicate the order in which the requests will be considered.

(c) The Minister of Justice or his or her designee shall consider all circumstances of the case, particularly:

- (1) the relative seriousness of the offenses;
- (2) the time and place of each offense;
- (3) the person's citizenship, national status, and country of usual residence;
- (4) the likelihood of the denial of an extradition request for any reason; and
- (5) the possibility of re-extradition of the person to a third foreign state.

### **Section 11. Supporting documents.**

(a) An extradition request shall be accompanied by:

- (1) as accurate and complete a description of the person as possible, including information on identity, nationality, and location;
- (2) a detailed statement of the acts or omissions constituting the extraditable offense, including details of the time and place of commission;
- (3) the text of the law creating the offense, including any applicable statutes of limitations;

(4) the text of the law prescribing the maximum penalty for the offense, or if the penalty is not prescribed by statute, a statement defining the maximum penalty that can be imposed.

(b) An extradition request for a person charged with but not yet convicted of an offense shall be accompanied by the original or an authenticated copy of the arrest warrant issued by an authorized judicial authority of the requesting country and by a description of the evidence providing probable cause supporting the belief the person sought to be extradited committed the offense;

(c) An extradition request for a person convicted of the offense shall be supported by the original or authenticated copy of the arrest warrant issued by an authorized judicial authority of the requesting country, the original or an authenticated copy of the judgment of the conviction, evidence establishing that the person is the person who was convicted, and a statement of whether the sentence has been imposed and if imposed, a copy of the sentence and a statement showing the portion of the sentence remaining to be served.

(d) Where an extradition request relates to a person who has been convicted of an offense in his or her absence, in addition to the documents described in subsection (c), the request shall be accompanied by a statement defining the legal means available to the person to prepare defenses and to have the case retried in the person's presence if the person is surrendered.

(e) Where an extradition request or a statement of intent to make an extradition request is received, and a substantial likelihood exists that the person may flee the Republic unless arrested, a facsimile or electronically transmitted copy of the arrest warrant or judgment may be substituted, provided that the requesting country produces an original or authenticated copy within 10 business days.

(f) All supporting documents shall be in English or accompanied by an authentic translation into English, and shall be consistent with the Palau Constitution and all evidentiary and procedural provisions of the Palau National Code.

(g) If the Minister of Justice or his or her designee determines that the supporting information or documentation is defective or deficient in any respect, the Minister of Justice or his or her designee may request the additional information and specify a reasonable time for its receipt.

## **Section 12. Authenticated documents.**

(a) Any relevant authenticated document shall be admissible in any proceeding under this Act, to the extent consistent with the Palau Constitution and all evidentiary and procedural provisions of the Palau National Code, and rules of Court.

(b) A document produced by a requesting country that is introduced for admission in any proceeding under this Act shall be deemed to be authenticated where such document is signed or certified by an authorized judicial authority, or is under the official seal of the requesting country.

(c) Nothing in this section prevents the proof of any matter or the admission of any document in the proceedings pursuant to any other law or rule of evidence of the Republic.

(d) Except as provided by this Act, all documents or other material supplied in response to or support of an extradition request shall not require further certification or authentication.

**Section 13. Application for extradition and surrender and for arrest warrant.**

- (a) Extradition proceedings under this Act are commenced by the Minister of Justice or his or her designee's filing of an application for extradition and surrender with the Supreme Court.
- (b) An application for extradition and surrender shall be accompanied by an application for an arrest warrant, unless the person has already been arrested.
- (c) The application for an arrest warrant shall be supported by the Minister of Justice or his or her designee's affidavit attesting to the matters enumerated in Section 9(c) and the necessary supporting documents.

**Section 14. Rule of Specialty.**

- (a) A person surrendered for extradition under this Act shall not be arrested, detained, tried, or punished in the requesting country for an offense other than that for which extradition has been granted, and the requesting country will not extradite the person to a third country unless:
- (1) the person has voluntarily surrendered to the jurisdiction of the third country or consented to the extradition; or
  - (2) the person has not left the requesting country's jurisdiction within thirty days of being free to do so; or
  - (3) the Republic has consented to the arrest, detention, trial, or punishment of that person for an offense other than that for which extradition was granted, subject to conditions as may be prescribed by the judge in the extradition proceedings.

(b) Subsection (a) shall not apply to offenses committed after extradition.

(c) The requesting country may try or punish the person for a different offense, including a lesser offense, upon notice to the Minister of Justice or his or her designee, if the different offense is based on the same facts as set out in the extradition request and is punishable by no greater penalty than the offense for which the person was surrendered.

**Section 15. Affidavit on specialty and other obligations.**

In support of the application for extradition and surrender, the requesting country shall submit an affidavit on specialty and other obligations to the Supreme Court before the surrender determination hearing, containing assurances that it will abide by the rule of specialty and any other undertaking, obligation, or promise that the Minister of Justice or his or her designee shall require as to the person's treatment.

**Section 16. Provisional arrest.**

(a) In the case of urgency where the Minister of Justice or his or her designee has provisionally approved the institution of extradition proceedings pursuant to section 9(d), or imminent receipt of an official extradition request is anticipated, and there is a substantial likelihood that the person may flee the Republic unless such person is immediately arrested, the Minister of Justice or his or her designee may apply to the Supreme Court for a provisional arrest warrant without filing an application for extradition and surrender.

(b) An application for a provisional arrest warrant shall be supported by: an affidavit of the Minister of Justice or his or her designee attesting to those matters required by Section 9(d) as have been met or established; and such supporting documents as are available at that time.

**Section 17. Power of judges to issue arrest warrants and provisional arrest warrants in anticipation of extradition.**

In anticipation of the surrender of a person to a requesting country, a judge is authorized to issue an arrest warrant or a provisional arrest warrant where:

(a) the Minister of Justice or his or her designee has filed an application for extradition and surrender or an application for a provisional arrest warrant; and

(b) the judge finds probable cause to believe that:

(1) a warrant for the arrest of the person has been duly issued in an extradition country for an extraditable offense; and

(2) the person named in the arrest warrant issued in the requesting country is the same person named in the Minister of Justice or his or her designee's warrant application; and

(3) the person is physically present or about to enter the Republic, and

(4) the requesting country has made an extradition request.

**Section 18. Return on the arrest warrant; preliminary hearing.**

(a) A person arrested under an arrest warrant or provisional arrest warrant issued pursuant to this Act shall be brought before a judge without unnecessary delay, and a preliminary hearing shall be held to determine whether there is probable cause to believe that:

(1) the person arrested is the same person named in the arrest warrant issued in the requesting country; and

(2) the person committed an extraditable offense in the requesting country; and

(3) the requesting country is an extradition country.

(b) At the preliminary hearing on probable cause:

(1) the rules of evidence shall apply;

(2) the person arrested shall be given a copy of the arrest warrant issued in the requesting country, the arrest or provisional arrest warrant issued in the Republic, the Minister of Justice or his or her designee's application for the arrest or provisional arrest warrant, and the affidavit in support of the arrest or provisional arrest warrant;

(3) the standard of proof shall be by a preponderance of the evidence.

(c) Where the evidence is sufficient, pending the surrender determination hearing or the person's voluntary surrender, the judge is authorized to:

(1) commit the person to custody or official detention in the Republic, for not more than 30 days pending further proceedings; or

(2) release the person on recognizance or bail pending the surrender determination hearing, if satisfied that the person will not flee the jurisdiction and will voluntarily appear at all subsequent extradition proceedings.

(d) Where a person is released on recognizance or bail, the judge is authorized to set reasonable conditions of release, including reporting requirements and such other conditions as are allowed under the laws of the Republic, and shall require that the person's travel documents be surrendered until conclusion of the surrender determination hearing.

### **Section 19. Automatic review hearing.**

(a) No later than 30 days after a person is committed to custody or released on recognizance or bail after a preliminary or review hearing, and every 30 days thereafter, a judge shall hold a review hearing to determine whether a person should be released or discharged, or whether any order made by a judge with respect to such person should be modified, rescinded, or continued in force.

(b) At the review hearing, the Minister of Justice or his or her designee shall present evidence in support of any request for continued custody and shall establish by a preponderance of the evidence that probable cause for those matters set forth in Section 9(c) continues to exist, and, if an application for extradition and surrender has not yet been filed, that extradition proceedings will be instituted in the Republic within the next 30 days.

(c) Where the judge is satisfied that the requirements of subsection (b) have been met, the judge may order the release of the person on recognizance or bail, under any of the conditions authorized by Section 18(d), or may remand the person to custody for an additional period not to exceed 30 days.

(d) Where the judge is not satisfied that the requirements of subsection (b) have been met, the person shall be released. Where the person was the subject of a provisional arrest warrant, such release shall not prevent the subsequent institution of extradition proceedings or the re-arrest of the person pursuant to those proceedings.

(e) No person shall be detained or held in custody longer than 60 days pursuant to orders from the preliminary or review hearings without the formal institution of extradition proceedings.

(f) No person shall be detained longer than 90 days pursuant to orders from the preliminary or review hearings unless a surrender warrant has been issued.

### **Section 20. Waiver of extradition and consent to surrender.**

(a) At any time, a person may waive extradition and voluntarily consent to surrender for criminal prosecution or punishment for any extraditable offense or any non-extraditable offense for which the person has been charged or convicted, provided the judge is satisfied that the consent is voluntarily given with notice of the matters enumerated in this section.

(b) Waiver of extradition and consent to surrender may be made by a person's oral or written application to a judge.

(c) Where a person applies to a judge for waiver of extradition for any extraditable offense and indicates that he or she wishes to consent to surrender, the judge shall conduct an inquiry on the record to determine

whether the waiver and consent are voluntarily given and whether the person understands the charges pending against him or her in the requesting country and the maximum penalties that could be imposed. During such inquiry the judge shall inform the person that waiving extradition and consenting to surrender shall mean that:

- (1) the person will be committed to the custody of the Republic until the person is surrendered;
- (2) no extradition proceedings will take place to determine whether the person should be surrendered for the extraditable offense;
- (3) the person's waiver of extradition and consent to surrender is final and cannot be withdrawn; and
- (4) the person will be surrendered without further court proceedings of any kind in the Republic.

(d) After the inquiry, the judge shall determine on the record whether the person fully understands the matters enumerated in subsection (c), and if so, whether the person continues to request that extradition be waived and voluntarily consents to surrender for the extraditable offense.

(e) Where charges are pending against a person in the requesting country for any criminal offenses that do not qualify as extraditable offenses under this Act, and the requesting country has asked that the person also be surrendered for prosecution or punishment for those offenses, and the person has informed the judge that he or she wishes to voluntarily consent to surrender himself or herself for prosecution or punishment for those offenses, the judge shall:

- (1) conduct an inquiry and advise the person as in subsection (c) with respect to the non-extraditable offense(s); and
- (2) inform the person that he or she cannot be extradited from the Republic for such other offense, and after the inquiry, shall determine on the record whether the person fully understands the matters enumerated in this subsection and subsection (c), and if so, whether the person continues to voluntarily consent to surrender for the non-extraditable offenses as well as for the extraditable offense.

(f) Where the judge is satisfied that:

- (1) the person has waived extradition for any extraditable offense and the consent to surrender for the extraditable offenses was given with notice and voluntarily; and, where applicable,
- (2) the consent to surrender for any non-extraditable offenses was given with notice and voluntarily, the judge shall order that the person be taken into the custody pending the person's surrender, and shall, without undue delay, issue a surrender warrant for the person with respect to the offense for which the person has consented to be surrendered.

## **Section 21. Surrender determination hearing.**

(a) Where the Minister of Justice or his or her designee has instituted extradition proceedings, and the person has not waived extradition or voluntarily consented to surrender, a judge shall hold a hearing to determine whether the person should be surrendered.

(b) The surrender determination hearing shall commence no later than 60 days after the filing of the application for extradition and surrender, and shall be open to the public and recorded.

(c) The evidence shall be limited to the following:

- (1) whether the person is the person named in the arrest warrant of the requesting country;
- (2) whether the offense for which extradition is sought is an extraditable offense;
- (3) whether the requesting country is an extradition country;
- (4) whether supporting documents have been filed with the Supreme Court, and whether such documents have been properly authenticated where required;
- (5) whether the supporting documents and other evidence adduced in the extradition proceedings support a finding that the person committed the extraditable offense, or is in violation of a court order issued in the requesting country in respect of an extraditable offense; and
- (6) whether any extradition objection has arisen, and if so, whether such extradition objection or any other law, compelling circumstance, or national interest precludes surrender of the person.

(d) The surrender determination hearing and all other extradition proceedings held under this Act shall not decide the guilt or innocence of the person.

(e) The surrender determination hearing and all other extradition proceedings under this Act shall be conducted as special proceedings which are neither exclusively civil nor criminal in nature, and which are held solely to determine whether the requirements of this Act have been met and the circumstances are such that the Act requires surrender of a person for the purpose of standing trial or serving a sentence for an extraditable offense.

(f) The person sought to be extradited shall be entitled to the assistance of legal counsel in all extradition proceedings, to notice of the charges pending in the requesting country, and to a hearing on whether an extradition request should be granted or denied.

(g) The presentation or establishment of a prima facie case is not required to grant an application for extradition and surrender; provided, however, where the law of the extradition country requires that evidence sufficient to support a prima facie case be presented in its extradition proceedings, and the Minister of Justice or his or her designee of the Republic requests that the court make a finding of whether a prima facie case has been presented:

(1) the judge shall assess the sufficiency of the evidence presented at the surrender determination hearing and make a finding on the record as to whether under the Republic's laws and rules of evidence, the evidence would be sufficient to place the person on trial had the offense been committed in the Republic; provided, however,

(2) Subsection (d) shall continue to apply.

## **Section 22. Surrender decision.**

(a) At the conclusion of the surrender determination hearing, the judge shall consider the evidence and determine whether to grant or deny the application for extradition and surrender.

(b) The judge shall grant the application for extradition and surrender upon finding, by a preponderance of the evidence, that:

- (1) the person is the person named in the arrest warrant of the requesting country;
- (2) the offense for which extradition is sought is an extraditable offense;
- (3) the requesting country is an extradition country; and
- (4) the supporting documents have been filed and, where required, properly authenticated;
- (5) the supporting documents and other evidence adduced in the extradition proceedings support a finding of probable cause to believe that the person committed the extraditable offense as such offense was presented and defined by the requesting country, or is in violation of a court order issued in the requesting country in respect of an extraditable offense; and
- (6) there is no legally sustainable ground to deny the application.

(c) The judge shall deny the application for extradition and surrender where:

- (1) a preponderance of the evidence has not established the matters set forth in subsections (b)(1) through (5);
- (2) a valid extradition objection has arisen;
- (3) the requesting country has failed to produce the affidavit on specialty and other obligations, or has failed to agree with any promise, obligation, condition, or assurance that the Minister of Justice or his or her designee or the judge imposed regarding the treatment of the person, and the Republic does not have an extradition treaty with the requesting country under which such obligations are required; or
- (4) taking into consideration the national interests of the Republic, including:
  - (i) its interest in effective international cooperation to combat crime;
  - (ii) the severity of the offense;
  - (iii) the length of time that has elapsed since commission of the offense; or
  - (iv) the length of time remaining on a sentence to be served,

the interests of justice demand that the person not be surrendered.

(d) Within seven days of the surrender determination hearing, the judge shall issue a written decision granting or denying the application for extradition and surrender, accompanied by findings of fact and conclusions of law, and where the application is granted, listing:

- (1) the extraditable offense for which the person is ordered to be surrendered; and,
- (2) any other offenses of which the person is found to have voluntarily consented to surrender.

(e) Where the judge determines that the application for extradition and surrender should be denied, the person shall be released from extradition proceedings.



(f) Where the judge determines that the application for extradition and surrender should be granted, the judge shall issue a surrender warrant, ordering that the person be committed to the custody of the Republic, to await surrender within the time limits established by Section 27.

(g) The Minister of Justice or his or her designee shall promptly notify the requesting country of the judge's decision and provide the requesting country with a copy of the written decision.

### **Section 23. Applications for re-extradition.**

(a) Where multiple extradition requests have been received, and the Minister of Justice or his or her designee has instituted extradition proceedings on behalf of one requesting country, but another requesting country seeks surrender of the same person for a different extraditable offense, upon the Minister of Justice or his or her designee's filing of an application for re-extradition on behalf of the other requesting country, the judge shall be authorized to determine whether the person can be re-extradited to that other country after the criminal proceedings have concluded in the first country to which the person is extradited.

(b) applications for re-extradition shall be made in the same manner as applications for extradition and surrender and must:

(1) be filed by the Minister of Justice or his or her designee on behalf of the country seeking re-extradition, before the surrender determination hearing held on the first requesting country's application for extradition and surrender;

(2) be approved by the first requesting country for re-extradition of the person to the second country seeking re-extradition; and

(3) meet all requirements of this Act for extradition of the person to a requesting country.

(c) Where an application for re-extradition has been properly filed, at the conclusion of the surrender determination hearing the judge shall determine whether to grant or deny the application for re-extradition, and shall issue an order stating findings of fact and conclusions of law justifying the decision.

(d) The Minister of Justice or his or her designee may file applications for re-extradition on behalf of any foreign state seeking extradition of the same person, and the judge may consider and rule upon any number of such applications; provided, however, only one such application shall be allowed on behalf of each foreign state.

### **Section 24. Surrender warrant; deferred surrender.**

(a) A surrender warrant shall:

(1) be in writing;

(2) state the offense for which the person is to be surrendered;

(3) require the Director of the Bureau of Public Safety to take custody of the person;

(4) authorize the Director of the Bureau of Public Safety or a law enforcement officer whom the Director designates to transport and hold the person in custody for such time as is necessary to enable the person to be transferred to the custody of the foreign escort officer within the time limits established by Section 27; and

(5) authorize the foreign escort officer to transport the person out of the Republic to the requesting country.

(b) If the person subject to the surrender warrant is already serving a sentence or has been charged for another offense committed in the Republic, the judge may order that the surrender warrant be held in abeyance and that execution be deferred until the person:

(1) has completed the sentence and is scheduled to be released from custody;

(2) has been tried and acquitted or convicted for the other offense, and has completed any sentence for such offense and is scheduled to be released from custody.

### **Section 25. Limited surrender for trial.**

(a) Where a judge determines after a surrender determination hearing that an extradition request and application for extradition and surrender should be granted, but:

(1) the person is being prosecuted or is serving a sentence in the Republic for an offense other than that for which extradition has been requested; and

(2) surrender is sought for an offense of which the person is accused but has not been convicted,

the judge may either defer the surrender until the conclusion of the proceedings or the full execution of any sentence, or may order limited surrender of the person for the purpose of trial in the requesting country.

(b) The judge shall not grant limited surrender for trial unless the law of the requesting country permits the return of offenders to the Republic after conviction in the requesting country, and the judge is satisfied by the affidavit on specialty and other obligations that:

(1) the person will be given a speedy trial in the requesting Country;

(2) the person will be returned to the Republic after the trial, even if convicted; and

(3) adequate provision has been made for the person's travel to the requesting country and return.

(c) Persons surrendered pursuant to this section shall remain in custody during the period of surrender and shall be returned to the Republic at the conclusion of the trial proceedings held in the requesting country.

### **Section 26. Temporary surrender warrant.**

(a) Upon application of the Minister of Justice or his or her designee, the judge may issue a temporary surrender warrant instead of a surrender warrant, for limited surrender for purposes of trial.

(b) A temporary surrender warrant must comply with the same requirements established for surrender warrants, and in addition shall state the terms of limited surrender, including:

(1) surrender has been granted for trial only;

(2) the person shall be given a speedy trial in the requesting country;

(3) the person shall be returned to the Republic after the trial, and if convicted, without execution of any sentence imposed; and

(4) the requesting country shall bear the expense and provide for the person's travel to the requesting country and return.

(c) Where a person who was the subject of a temporary surrender warrant was surrendered to the requesting country and was returned after trial in the requesting country: and,

(1) has completed his or her sentence in the Republic; or

(2) has been tried and acquitted, or convicted for the offense in the Republic and has completed any sentence and is scheduled to be released from custody;

the judge may issue a surrender warrant for imposition and execution of the sentence imposed in the requesting country for the extraditable offense for which the person had been temporarily surrendered for trial.

(d) Any time a person spends in custody in a requesting country as a result of a temporary surrender warrant shall count toward the sentence being served, or for calculating the time to be served for any sentence imposed after conviction in the Republic proceeding that was pending against the person before limited surrender.

(e) Where a person who is the subject of a temporary surrender warrant completes the sentence being served while in custody in the requesting country, the Minister of Justice or his or her designee shall so advise the requesting country, and the return of the person is not required.

#### **Section 27. Execution of a surrender warrant.**

(a) Where a surrender warrant has been issued, the Minister of Justice or his or her designee shall immediately notify the requesting country of the time limitations of this section, the length of time the person has been held in custody since issuance of the surrender warrant, and of the requesting country's obligation to expeditiously arrange for execution of the surrender warrant.

(b) Where a person is in custody pursuant to a surrender warrant, but has not been surrendered within 60 days of the date the surrender warrant was issued, the person may apply to a judge for rescission of the surrender warrant and release from custody, and a hearing shall be held on the application.

(c) Subsection (b) shall not apply where a surrender warrant has been held in abeyance and execution of the warrant deferred because the person is serving a sentence in the Republic or is a defendant in a criminal case which has not been concluded.

(d) Notice shall be given to the Minister of Justice or his or her designee where an application for rescission of the surrender warrant is made, and a hearing shall be held within a reasonable time.

(e) At the hearing, the Minister of Justice or his or her designee shall have the burden of establishing by a preponderance of the evidence that there is justifiable cause for the delay in executing the surrender warrant.

(f) Unless the evidence establishes that there was justifiable cause for delay in executing the surrender warrant, the judge shall grant the application for rescission and order that the person be released from custody with respect to the extradition proceedings.

(g) Justifiable cause for delay includes, but is not limited to:

- (1) surrender during that time period would have endangered the person's life, health, or personal safety;
- (2) no suitable means of transport was available, and all reasonable steps were taken to obtain suitable transport; or
- (3) there was delay by a third country in responding to a request by the requesting country for permission to transport the person through the third country, and all reasonable steps were taken to obtain the permission; or
- (4) the remoteness of the requesting country made it unreasonable to expect that surrender could be effected within the time limit.

(h) The judge shall deny the application for rescission of the surrender warrant where the evidence establishes that there was justifiable cause for delay in surrendering the person, and order that the person continue to be held in custody for an additional period not to exceed 60 days, unless renewed in accordance with this section.

(i) Even with justifiable delay, no person shall be held in custody pursuant to a surrender warrant longer than 180 days, when the surrender warrant shall automatically expire.

#### **Section 28. Evidence-taking in the Republic.**

(a) Where a request has been made to the Minister of Justice or his or her designee for the taking and gathering of evidence in the Republic relating to an extraditable offense committed in a extradition country, the Minister of Justice or his or her designee shall consider and act upon the request pursuant to applicable Palau law.

(b) In any case where the Minister of Justice or his or her designee has instituted or intends to institute extradition proceedings, the Minister of Justice or his or her designee may, consistent with Palau law, authorize and assist a requesting country in gathering evidence in the Republic, subject to appropriate conditions, for use in:

- (1) any proceedings for the extradition of the person from the Republic;
- (2) any proceedings in the extradition country relating to the prosecution or punishment of such person for the extraditable offense.

#### **Section 29. Curing of deficiencies or defects in documents.**

In any proceeding under this Act, where a required document is defective or deficient in any respect, and the judge considers the defect or deficiency to be readily curable, in the interest of justice, the judge may continue the proceedings for a reasonable period to allow the defect or deficiency to be cured.

### **SUBCHAPTER III**

#### **EXTRADITION TO COMITY COUNTRIES**

##### **Section 30. Designation or deeming of a comity country as an extradition country.**

- (a) At any time, a comity country may be designated by regulation as an extradition country for purposes of this Act.
- (b) The Minister of Justice or his or her designee may certify a comity country as an extradition country for purposes of a particular extradition request, where, considering the seriousness of the offense and the national interest in combating crime, wherever it occurs, the public interest of the Republic and the comity country warrant such certification, provided the other requirements of this Act are met.
- (c) When the Minister of Justice or his or her designee certifies a comity country as an extradition country, the Minister of Justice or his or her designee may also specify conditions that are to apply to the extradition request, and may require the comity country to enter into reasonable obligations, promises, and agreements as evidenced by an affidavit on specialty and other obligations.
- (d) Where a comity country is designated an extradition country through regulations or certification of the Minister of Justice or his or her designee, extradition from the Republic to such comity country shall be allowable and the provisions and procedures of this Act shall apply.

##### **Section 31. Limitation on commencement of extradition proceedings.**

Extradition proceedings may not be commenced on a request from a comity country until the country has been designated an extradition country by regulation or certification of the Minister of Justice or his or her designee.

### **SUBCHAPTER IV**

#### **SEARCH, SEIZURE AND TRANSIT**

##### **Section 32. Application of other laws.**

- (a) In addition to the procedures set forth in this Act, the provisions of chapter 3 of title 18 of the Palau National Code and the Money Laundering and Proceeds of Crime Act shall apply to any search, seizure, arrest, confiscation, or other activity authorized under this chapter.
- (b) Any action authorized by the Money Laundering and Proceeds of Crime Act shall be authorized under this Act, including confiscation of tainted property, pecuniary penalties, search and seizure of tainted property, the issuance of restraining orders and production orders, and realization of property.

##### **Section 33. Search for and seizure of tainted property in relation to foreign offenses.**

- (a) Where an extradition country requests assistance with the location or seizure of property suspected to be evidence or tainted and related to an extraditable offense, the Money Laundering and Proceeds of Crime Act shall apply, provided that the Minister of Justice or his or her designee has authorized the giving of assistance to the foreign state under the Mutual Assistance in Criminal Matters Act.

(b) Subsection (a) shall apply regardless of whether an extradition request has already been made or received.

**Section 34. Transit.**

(a) Notice to and approval by the Minister of Justice of an official request shall be required to transit through the Republic a person who is accused or convicted of a serious offense and is being extradited for trial or service of a sentence of imprisonment or conditional release.

(b) Where an extradition or comity country makes an official request for transit through the Republic and notwithstanding any immigration law, the Minister of Justice shall give permission to such extradition or comity country to transport through the Republic:

(1) any person who has been duly surrendered to the extradition or comity country by another country, for purposes of extradition for a serious offense that is not a political offense or an offense of purely military character; and

(2) any convicted person being transferred to an extradition or comity country from another country for service of a sentence of imprisonment, or supervision over the person's conditional release,

unless the national security interests of the Republic clearly require that such permission be denied; provided, however, a request for transit may be refused where a request for extradition of the person from the Republic to that extradition country for the same offense would not have been allowable under this Act, or where there is reason to believe that the person's safety might be threatened.

(c) Where transit permission is given, a law enforcement officer in the Republic may assist the foreign escort officer escorting the person, and the person may be held in custody in the Republic until the person's journey to the extradition country can continue.

(d) If it becomes necessary to hold a person transiting through the Republic in accordance with subsection (a) in custody for more than 96 hours, the person shall be brought before a judge who may issue an order to commit the person to continued custody in the Republic until the person's journey to the extradition country can continue.

(e) When transit of a person is to be made by air transport and no stop is scheduled to be made in the Republic, no prior notice or approval of such transit is required; provided, however, in the case of extenuating circumstances creating an unscheduled landing in the Republic, immediate notice shall be given to the Minister of Justice which shall have the effect of a request for provisional arrest, and the foreign state having custody of the person shall submit an official request for transit to the Minister of Justice, who shall be authorized to take any legal action necessary or expedient in such circumstances.

**SUBCHAPTER V****TRANSNATIONAL EXTRADITION OF PERSONS FROM A FOREIGN STATE TO THE REPUBLIC****Section 35. Surrender to the Republic.**

A person may be surrendered to the Republic from any foreign state for purposes of prosecution or punishment of the person for any serious offense that the person committed or allegedly committed in the Republic.

**Section 36. Surrendered persons to be brought before a judge.**

(a) A person surrendered to the Republic for a serious offense shall be brought into the Republic and delivered to the appropriate authorities.

(b) The Minister of Justice or his or her designee shall designate an authorized officer to escort the person surrendered from the foreign state, and the person shall remain in custody during transit.

(c) Upon entry of the person into the Republic, the person shall be brought before a judge as soon as practicable, but in any event within 48 hours, and shall be committed to custody until the person can be tried or the imposition of any sentence.

**Section 37. Limitations on prosecution and detainment.**

A person surrendered to the Republic for any serious offense shall not, without having the opportunity to voluntarily depart the Republic:

(a) be detained or tried for any offense committed before surrender, other than the offense for which surrender was made, except for alternate and lesser included offenses in lieu of the original offense on proof of the same facts constituting the original offense and for which the penalty is no greater than the penalty for the original offense;

(b) be detained for surrender to a third foreign state for an offense committed before surrender to the Republic, unless the judge or magistrate in the surrendering country has so ordered in the surrender determination proceedings, and other requirements of this Act for extradition have been met.

**Section 38. Persons temporarily surrendered to the Republic.**

(a) Where a person is temporarily surrendered to the Republic for trial for a serious offense, but has criminal charges pending or an uncompleted sentence in the surrendering country, the person shall:

(1) be kept in custody at all times in compliance with any condition to which the surrendering country specified and the Minister of Justice or his or her designee agreed;

(2) not be prosecuted, detained, or punished for any offense other than that for which temporary surrender was granted, except for alternate and lesser included offenses in lieu of the original offense, on proof of the same facts constituting the original offense, and for which the penalty is no greater than the penalty for the original offense; and

(3) be returned to the surrendering country after trial.

(b) Where a person has been temporarily surrendered, and the surrendering country officially notifies the Republic that it no longer requires the person to be returned:

(1) if the person is convicted in the Republic, any sentence imposed shall be immediately executed;

(2) if the person is not convicted in the Republic of the offense for which the person was surrendered, or any alternate offense, such person shall be released from custody; provided, however,

(i) such release shall be subject to the immigration laws of the Republic;

(ii) the person shall, upon request, be returned to the surrendering country, at the Republic's expense.

### **Section 39. Evidence for purposes of surrender to the Republic.**

Where the Minister of Justice or his or her designee intends to seek extradition of a person to the Republic, the Minister of Justice or his or her designee may authorize the taking of evidence in the surrendering foreign state for use in any proceedings relating to the person's extradition to the Republic or to the offense; provided that the evidence be taken pursuant to the Mutual Assistance in Criminal Matters Act and the Foreign Evidence Act.

## **SUBCHAPTER VI.**

### **TRANSFER OF CONVICTED PERSONS**

#### **Section 40. Transfer of convicted persons allowed.**

(a) The Republic shall afford the widest measure of cooperation with the transfer of persons convicted of serious offenses to and from the Republic, in accordance with the provisions of this chapter which applies to convicted persons who have been sentenced to imprisonment or to a period of conditional release, including probation, a suspended sentence, or parole.

(b) A citizen of the Republic who has been convicted of a serious offense in a foreign state, and sentenced to a term of imprisonment or conditionally released, may be transferred to the Republic for service of any sentence imposed by the foreign court or for enforcement of any conditions of a conditional release order.

(c) A citizen of any foreign state who has been convicted of a serious offense in the Republic, and sentenced to a term of imprisonment or conditionally released, may be transferred to such foreign state in accordance with this chapter for service of any sentence imposed by the court or for enforcement of any conditions of a conditional release order.

(d) The convicted person may request transfer to the transferring country or the receiving country, or the transferring country or the receiving country may request transfer.



**Section 41. Conditions of eligibility for transfer of convicted persons.**

A person convicted of a serious offense in the Republic, in an extradition country, or in a foreign state that is not an extradition country, may be transferred to serve the sentence or for enforcement of the terms of any conditional release order, where all of the following conditions are met:

- (a) the person is a citizen of the receiving country;
- (b) the foreign country has agreed to comply with the requirements of this chapter, evidenced by a written agreement stating the terms of the transfer, signed by the Minister of Justice or his or her designee or chief law enforcement officer of both the transferring country and the receiving country;
- (c) the judgment of conviction is final, any appeal procedures have been completed, and no collateral or extraordinary remedies are pending;
- (d) the convicted person voluntarily consented to the transfer, with full knowledge of the consequences, or the convicted person's attorney consented if the person cannot due to any medically diagnosed physical or mental impairment or condition;
- (e) before the transfer, the transferring country has afforded an opportunity to the receiving country to verify the consent;
- (f) both the transferring country and receiving country agree to the transfer, as evidenced by the written agreement;
- (g) where the person has been sentenced to imprisonment, at the time of receipt of the request for transfer, at least six months of the sentence remain to be served; however, in exceptional cases where the interest of justice requires, a sentenced person may be transferred even if the remaining time to be served is less than six months.

**Section 42. Obligation to provide information to persons convicted in the Republic and to extradition countries.**

- (a) Where a citizen of a foreign state is convicted of a serious offense in the Republic, the court shall inform the person and legal counsel about the opportunity for transfer under this chapter, and of the procedure for making a request for transfer.
- (b) Where the convicted person is a citizen of an extradition country, the Minister of Justice or his or her designee shall inform the extradition country of the conviction as soon as practicable after the conviction becomes final, and shall provide the extradition country with the following information:
  - (1) the person's name, date and place of birth, and passport number;
  - (2) the person's address or place of residence in the extradition country;
  - (3) a statement of the facts upon which the conviction was based;
  - (4) a statement describing the judgment and any order of commitment or conditional release.

(c) Where the convicted person is a citizen of a foreign state that is not an extradition country, the court may, upon request of the person, order the Minister of Justice or his or her designee to provide the foreign state with the information in subsection (b).

(d) Convicted persons shall be informed in writing of any action that the Minister of Justice or his or her designee takes and any decision made by the Republic or the extradition country or any foreign state with respect to a request for transfer.

### **Section 43. Requests for transfer.**

(a) The Minister of Justice or his or her designee shall make a request for transfer of a convicted person and any subsequent communications in writing through diplomatic channels to the receiving country.

(b) Requests made to the Republic for transfer of a citizen of the Republic convicted of a serious offense in any foreign state shall be in writing and communicated to the Minister of Justice or his or her designee, who shall review and act upon such request promptly and shall inform the foreign state in writing of the decision.

(c) A request for transfer of a convicted foreign citizen shall be made only with the approval of the President of the Republic, after consultation with the Minister of Justice, the Director of the Bureau of Public Safety, and the judge rendering the judgment of conviction.

(d) A request for transfer of a citizen of the Republic shall require the approval of the President of the Republic, after consultation with the Minister of Justice and the Director of the Bureau of Public Safety.

(e) In deciding a request for transfer, the following shall be taken into account:

(1) whether the transfer would adversely affect the rights of the victims of the offense, particularly with respect to any rights to the payment of restitution or compensation by the person;

(2) whether the transfer would contribute positively to the person's social rehabilitation and lawful reintegration into society;

(3) the seriousness of the crime;

(4) the person's previous criminal record;

(5) the physical and mental health of the person;

(6) the ties that the person may have to the transferring and receiving countries;

(7) the capability of the receiving country to enforce the sentence or conditions of release, and the likelihood of enforcement in substantial compliance with the court order;

(8) considering the economic status and other factors of the transferring country, the ability of that country to enforce the sentence or conditions of release in that country if the person is not transferred;

(9) the respective prison conditions in the transferring country and the receiving country, if the person has been sentenced to imprisonment, including whether the prison conditions in the

receiving country are at least substantially equivalent to the minimum standards for imprisonment in the transferring country;

(10) whether the transfer will substantially contribute to the development of more effective regional and international cooperation in law enforcement, particularly with respect to penal matters; and

(11) whether the transfer will advance the principles embodied in the Universal Declaration of Human Rights, adopted on 10 December 1948, and the International Covenant on Civil and Political Rights, adopted on 16 December 1966.

#### **Section 44. Supporting documents required for requests for transfer.**

(a) A document or statement verifying that each of the conditions of eligibility for transfer of convicted persons has been met shall be provided by the transferring country to the receiving country.

(b) Where a request for transfer is made, the transferring country shall also provide the following documents to the receiving country:

(1) a certified copy of the judgment of conviction and sentence, and a copy of the law on which the conviction is based;

(2) a statement indicating how much of the sentence of imprisonment has already been served, or what conditions of the conditional release order have been satisfied, together with information on any pre-trial detention, and any other factor relevant to the enforcement of the sentence or conditional release;

(3) a document signed by the person evidencing the person's consent to the transfer if required; and

(4) any available medical, psychological, or social reports pertaining to the person, together with information about any medical or other therapeutic treatment received and any recommendation for further treatment.

(c) The transferring country or the receiving country may demand receipt of any of these documents or statements before making or deciding a request for transfer.

#### **Section 45. Verification of convicted person's consent to transfer.**

(a) The transferring country and the receiving country shall ensure that the person required to give consent to the transfer does so voluntarily and with full knowledge of the legal consequences.

(b) The transferring country shall afford an opportunity to the receiving country to verify through a consul, other verifying officer, or official agreed upon, that the consent is given knowingly and voluntarily.

(c) The procedure for giving and verifying consent shall be as follows:

(1) Before the transfer of a person from or to the Republic, a verifying officer shall inquire whether the person understands and agrees that the consent to transfer, once verified, is irrevocable and that the transfer will be subject to the conditions imposed by this chapter;

(2) Before determining that a person's consent is voluntary and knowing, the verifying officer shall advise the person of the person's right to consult with legal counsel; and if the person so desires, the proceedings will be continued until the person has had an opportunity to consult with legal counsel;

(3) The verifying officer shall determine that the consent is voluntary and not the result of any promises, threats, or other improper inducements;

(4) The consent of the person and acceptance by the transferring and receiving countries shall be in writing and signed by the person and his or her legal counsel, and endorsed by the verifying officer, and the Minister of Justice or his or her designee or chief law enforcement officer of the transferring country;

(5) The verification of consent proceedings shall be recorded, and the verifying officer shall maintain custody of the records.

#### **Section 46. Effect of transfer for transferring country.**

(a) The taking charge of a person by the receiving country's authorities shall have the effect of suspending the enforcement of the sentence or conditional release order in the transferring country.

(b) The transferring country may no longer enforce the sentence or conditional release order if the receiving country considers enforcement of the sentence or conditional release order to have been completed.

#### **Section 47. Effect of transfer for receiving country; authorization where receiving country is the Republic.**

(a) The authorized authorities of the receiving country shall:

(1) continue enforcement of the sentence or conditional release order through a court or administrative order, under the conditions set out in section 48; or

(2) convert the sentence, through a judicial or administrative procedure, into a decision of that country, thereby substituting for the sanction imposed in the transferring country a sanction prescribed by the law of the receiving country for the same offense.

(b) If requested, the receiving country shall inform the transferring country before the transfer of the sentenced person as to which procedure it will follow.

(c) The law of the receiving country shall govern enforcement of the sentence or conditional release order, and that country alone shall be authorized to take all appropriate decisions.

(d) Any country which cannot avail itself of one of the procedures to enforce measures imposed in another country on persons who for reasons of mental condition have been held not criminally responsible for the commission of the offense, but which is still prepared to receive such persons for further treatment, may indicate in advance of any transfer or decision on whether to agree to a transfer the procedures it will follow in such cases.

(e) Where the Republic is the receiving country, judges of the Supreme Court shall be authorized to:

(1) continue the enforcement of the sentence or conditional release order foreign state's court order through an order; or

(2) convert the sentence or conditional release order of the foreign state's court, through a judicial determination, into a decision of the Supreme Court, thereby substituting a sanction prescribed by the law of the Republic for the same offense.

#### **Section 48. Continued enforcement in the receiving country.**

(a) In the case of continued enforcement, the receiving country shall be bound by the nature and duration of the sentence, conditional sentence, or conditional release.

(b) Notwithstanding subsection (a), where the sentence or conditional release order is by its nature or duration incompatible with the law of the receiving country, or its law so requires, by a court or administrative order, the receiving country shall adapt the sanction to a punishment or measure prescribed by its own law for a similar offense; provided, however, such punishment or measure shall correspond with the sentencing order to be enforced as far as possible.

(c) The receiving country shall not aggravate the sanction by its nature or duration, nor exceed the maximum prescribed by the law of the receiving country.

#### **Section 49. Conversion of sentencing order or order for conditional release.**

(a) In the case of conversion of a sentencing order or an order for conditional release, the procedures provided by the law of the receiving country apply.

(b) When converting a sentencing order or an order for conditional release, the authorized authority of the receiving country:

(1) shall be bound by the findings of facts insofar as they appear explicitly or implicitly from the judgment;

(2) may not convert a sanction involving deprivation of liberty to a pecuniary sanction;

(3) shall deduct from the full period of deprivation of liberty the period already served; and

(4) shall not increase the term of imprisonment, and shall not be bound by any minimum the receiving country may provide for the offense committed.

(c) If the conversion procedure takes place after the transfer of the convicted person, the receiving country shall keep that person in custody or otherwise ensure the person's presence in the receiving country pending the outcome of that procedure.

#### **Section 50. Pardon, amnesty, commutation.**

Either the transferring country or the receiving country may grant pardon, amnesty, or commutation of a sentencing order or an order for conditional release, in accordance with its Constitution or other laws.

#### **Section 51. Review of judgment.**

The transferring country alone shall have the right to decide on any application for review of the judgment.

**Section 52. Termination of enforcement.**

The receiving country shall terminate enforcement of the sentence or conditional release as soon as it is informed by the transferring country of any decision or measure whereby the sentence or conditional release ceases to be enforceable.

**Section 53. Information on enforcement.**

The receiving country shall inform the transferring country:

- (a) when it considers enforcement of the sentence to have been completed;
- (b) if the sentenced person has escaped from custody; or
- (c) if the transferring country requests a special report.

**Section 54. Transit of convicted persons.**

A convicted person transiting through the Republic pursuant to this section shall not be prosecuted, or detained, or otherwise subjected to any restriction of liberty in the Republic for any offense committed or sentence imposed before the person's departure from the transferring country.

**Section 55. Language, authentication of documents, and costs.**

- (a) Information required under section 42(a) shall be provided to the person in the person's language, where the person does not understand the English language.
- (b) Requests for transfer of convicted persons and supporting documents shall be in the English language or accompanied by a translation into the English language.
- (c) Except as provided in section 44(b)(1), certification of documents transmitted in application of this chapter shall not be required.
- (d) The receiving country shall bear any costs incurred in the application of this chapter except costs incurred exclusively in the transferring country.

**Section 56. Retroactive effect.**

This chapter shall apply to the enforcement of any sentence or conditional release order imposed before its entry into force.

**Section 57. Relationship to extradition treaties and international agreements.**

This chapter does not affect the rights and undertakings derived from extradition treaties and other treaties or international agreements on international cooperation in criminal matters providing for the transfer of detained persons for purposes of confrontation or testimony.

**Section 58. Liberal construction; friendly settlement.**

This chapter shall be liberally construed so as accomplish the purposes of this Act, particularly with respect to the effective regional and international cooperation in penal matters and the lawful reintegration of

criminal offenders into society, and to that end, the Republic shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of its application.

## **SUBCHAPTER VII.**

### **MISCELLANEOUS**

#### **Section 59. Provision of evidence for prosecution by other countries.**

Where the Republic seeks extradition of a person accused or convicted of a serious offense in the Republic; but,

(a) a foreign state has refused or failed to surrender the person to the Republic; and

(b) the foreign state has agreed to prosecute or punish the person for the offense for which the Republic sought surrender, upon request by the foreign state made pursuant to the Mutual Assistance in Criminal Matters Act, and approved by the Minister of Justice or his or her designee, the Minister of Justice or his or her designee shall provide the foreign state with all available evidence to enable the foreign state to prosecute and punish the person.

#### **Section 60. Costs and expenses.**

(a) The Republic shall bear all costs of any proceedings conducted in the Republic arising out of an extradition request, whether such request was made by the Republic or a foreign state, provided the foreign state affords reciprocal services to the Republic, including costs incurred in pursuing the request through the Supreme Court, and costs incurred in connection with the seizure and handing over of property, or the arrest and detention of the person whose extradition is sought, and shall also bear the costs incurred in conveying a person whose extradition is sought by the Republic, from or returning the person to the Republic including transit costs.

(b) The requesting country shall bear the costs of any proceedings conducted in the requesting country arising out of an extradition request, including costs incurred in pursuing the request through the courts, and costs incurred in connection with the seizure and handing over of property, or the arrest and detention of the person whose extradition is sought, and shall also bear the costs incurred in conveying a person whose extradition is sought by the requesting country from or returning the person to the requesting country including transit costs.

#### **Section 61. Judicial review.**

Judicial review of the detention or custody of a person under this Act, or of any order issued or proceeding held under this Act, shall be limited to an application for a writ of habeas corpus, and the scope of a habeas corpus review shall be limited to:

(a) jurisdiction of the court;

(b) whether a request for extradition was properly pursued under this Act, and whether the Act's requirements have been met;

(c) the identity of the person in custody or detained, or whose liberty has been restricted, and whether that person is the same person named in the arrest warrant issued in the requesting country; and

(d) whether there was sufficient evidence to support a finding of probable cause to believe that the person committed the serious offense as such offense was presented and defined by the laws of the requesting country, or is in violation of a requesting country court order.

### **Section 62. Regulations.**

The Minister of Justice may promulgate regulations not inconsistent with this Act, prescribing all matters necessary or convenient for giving effect to the Act, including but not limited to:

(a) creating schedules which list treaty countries and extradition countries to which this Act applies; provided, however, a foreign state shall be listed in only one such schedule;

(b) amending schedules;

(c) designating a comity country as an extradition country, pursuant to section 30;

(d) creating evidentiary regimes to be followed in proceedings applicable to particular countries, where special evidentiary requirements must be met for such countries;

(e) establishing the forms for arrest or surrender warrants;

(f) setting out the text of extradition treaties or other applicable international agreements relating to extradition or transfer of convicted persons;

(g) establishing procedures for implementation of subchapter VII, including procedures for acceptance or rejection of requests for transfer; and

(h) clarifying any provision of this Act where such becomes necessary in order to give effect to an extradition treaty.

### **Section 63. Unlawful flight to avoid prosecution or punishment.**

(a) A person who knowingly commits a crime against the Republic punishable by imprisonment for more than one year, and subsequently leaves the Republic in order to escape apprehension, prosecution, or punishment, commits a felony offense punishable by imprisonment for not more than three years, a maximum fine of \$25,000, or both.

(b) A person charged with or convicted of a crime against the Republic punishable by imprisonment for more than one year, who subsequently leaves the Republic in order to escape apprehension, prosecution, or punishment, in violation of a court order relating to the charge or conviction, commits a felony offense punishable by imprisonment for not less than six months and not more than ten years, a maximum fine of \$100,000, or both.

(c) In a prosecution for any offense created by subsection (a), there shall be a rebuttable presumption that the person left in order to escape apprehension, prosecution, or punishment, where the person left the Republic within 180 days of commission of the offense.



(d) In a prosecution for any offense created by subsection (b), it shall be presumed that the person left the Republic in order to escape apprehension, prosecution, or punishment, where the person left in violation of a court order not to leave the Republic and the person has refused to voluntarily return to appear at any proceedings relating to the relevant charge or conviction by waiving extradition and consenting to surrender."

**Section 2. Effective date.**

This Act shall take effect 120 days after promulgation of regulations and after approval by the President of the Republic.

PASSED: June 19, 2001

Approved this \_\_\_\_\_ day of June, 2001.

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Tommy E. Remengesau, Jr., President

Republic of Palau

RPPL No. \_\_\_\_\_

(Intro. as H. B. No. 6-72-3S,

HD1, SD7)