



New Palau Corporations Act and Online Register

1.0 Overview

Palau has passed a new Corporations Act (the Act), 12 PNCA Chapter 1. The old Palau law generally followed American-based law as it appeared in the 1960s. The new Act also follows American law as it has been derived from the American Model Corporations Act, but has been customised for a country the size of Palau. Thus, given that both the old law and the Act follow American-based principles, there is not be a significant philosophical change in the approach to corporate law in Palau. Instead, the changes should be thought of as updates and enhancements to existing law. Further, as a general proposition, the language in the Act is more user-friendly and the sections are laid out in a more logical manner than the old law. This should assist the private sector in understanding its responsibilities under law.

A centerpiece of the Act is that it embraces an electronic online-only corporation register. All filings that a corporation must submit to the Registrar will be available in the new online register, which commenced January 20, 2025. This system will fundamentally change the way corporations are formed and maintained through their life-cycle. The register will allow Palau to do away with outdated, bureaucratic formalities that formerly caused significant delays in completing incorporation.

The register will also make it very easy for corporations to keep their information current, such as when an address changes or when there is a change of directors. The use of standardized online forms significantly eases the burden on local businesses to form corporations and to comply with ongoing requirements.

Another huge benefit of the online register concerns access to information. Currently there is no easy way to easily provide information about a corporation as all details are stored in paper files. To obtain even the simplest information requires a physical search of these paper files, a process that sometimes can take weeks. The new register will be a source of current, accurate information that will be available to the public for searching online in real time.

Taken together, these changes will significantly ease the burden of starting and operating a corporation in Palau. FIC looks forward to this new era and welcome feedback on all aspects of the register so that it can best serve our nation.

The remainder of this paper discusses key aspects of the reform in more detail.

2.0 The Act

The following is a summary of some of the key provisions of the Act and how the law interacts with the register. One preliminary note is important to keep in mind. One aspect of any corporate law is to provide guidance on how a corporation is to govern its own internal affairs. This includes such things as how directors are to be selected, how meetings are to be conducted, and how communications can be sent to shareholders. Older laws dictated how these types of activities were to be handled. The more modern approach, and the one adopted by this Act, allows for a corporation to customize many of these details through provisions in its Articles of Incorporation or its Bylaws. So, in many cases, the Act states something like: “Unless the articles or the bylaws provide otherwise, then the corporation must...” follow the rule set out in the legislation. The Palau drafting committee that worked on the Act believed that this approach was appropriate for Palau in that it allows for the maximum flexibility for each corporation to establish many of its internal operating procedures via its Articles and Bylaws.

2.1 Online filing. The biggest practical impact of the new Act is that it allows Palau to implement an electronic, fully online electronic business entity register. Note the name “business entity” register. The system that has been put in place is scalable. This means that it will allow Palau to add more entities into the register over time so that all business entity types can eventually be included in one register.

2.2 Forming a corporation made simple. The old law had many formalities that had to be followed to complete an incorporation, including that there be 3 incorporators and all documents must be “acknowledged” before a Clerk of the Court or a notary public. Then, once the Registrar approved the submittals, the documents must be signed by the President of the Republic of Palau. These outdated requirements (obstacles, actually) have all been removed under the Act. All that a business person need now do is complete an online form that collects the required information, and so long as the application is properly completed a Certificate of Corporation will be issued. The information that must be supplied is straightforward:

- Identify all shareholders and their shareholdings;
- Identify all directors. Under the Act, a corporation can have only 1 director. Further, at least 1 director must be a resident of Palau. Note: all directors will upload a scan of a government-issued photo ID (like a passport or driver licence) to assist Palau in complying with international ant-money laundering mandates;
- Identify all officers;
- Provide relevant addresses (registered office, principal place of business, postal);
- Indicate the primary business activity; and
- A corporation may also include any optional information that is desired to be part of the Articles of Incorporation. This could include provisions as varied as limiting the activities that a corporation can undertake, mandating when dividends must be paid, or setting restrictions on who is eligible to be a director of the corporation.

Note that the old accounting concept of stated capital is no longer required to be addressed in the Articles. Related concepts of paid-in surplus and par value are also not required to be in the Articles.

2.3 Nonprofit corporations. The new Act covers nonprofit corporations, and they will be able to use the online register the same as for-profit corporations. They will supply the same information as a for-profit corporation except of course that they do not have shareholders.

One significant change is that the new Act provides a new framework to classify nonprofits into one of three different subtypes, as described below:

- Public benefit nonprofit corporation. A public-benefit nonprofit corporation is the type of nonprofit that is commonly thought of when people use generic term "nonprofit." It is typically organized for charitable purposes that will benefit the public generally or a segment of the public, such as a community (like a park or playground). Entities furthering health and social services, educational, athletic and artistic programs are the types that generally fall into this category.
- Mutual benefit nonprofit corporation. These organizations seek to only benefit a select group of people. The most obvious type of mutual-benefit nonprofit is a membership organization such as a chamber of commerce or an organization that promotes tourism or fishing for its members. While a mutual-benefit nonprofit shares the same underlying structure as a public-benefit corporation, the scope of its mission is more narrowly focused.
- Religious nonprofit corporations include churches and other related organizations. Unfortunately, this does not include ecclesiastical corporations (also known as corporations sole) as these entities have their own legislation.

Having these subtypes in the law will make it easier to understand the types of nonprofits operating in Palau. However, another reason to establish these subtypes relates to how the assets of a nonprofit corporation are distributed upon its closure. Under the Act, when a public benefit nonprofit closes it must give its assets to another public benefit nonprofit. This helps ensure that donations and gifts that were made to it cannot ultimately end up in the pockets of its members or directors. On the other hand, payments made to mutual benefit nonprofits would ultimately revert to its members upon dissolution. This makes sense in that most contributions made to mutual benefit nonprofits are in the form of membership dues.

For religious nonprofits, the Act largely takes a "hands off" approach to regulating the inner workings of these entities. The idea is that a government should not delve too far into dictating the internal process of how persons are qualified to become members, who makes decisions, how people are expelled, etc. Palau already has a corporate entity called the "corporation sole" which is similar in nature to the religious nonprofit, so these sorts of differences will not be new to Palau.

2.4 Maintaining up-to-date information. The Act requires each corporation to submit filings to the Registrar any time there is a change of shareholders, directors, officers, or relevant addresses. This is important for the obvious reason that a registry should have up-to-date and

accurate information. This is doubly important when this information will be available for online searchers in real time.

2.5 Annual Returns. The Act and new register will allow for all annual returns to be filed online and impose consequences on corporations that fail to file. The Act requires all corporations to file annual returns with clear consequences for the lack of filing. These requirements, together with an electronic register that can automatically enforce these requirements, will greatly enhance compliance with international AML mandates.

2.6 Beneficial Ownership information. International anti-money laundering mandates place a huge emphasis on governmental authorities being able to access beneficial ownership information about each registered entity. The term “beneficial owner” is defined in Section 1601(g) of the Act as follows:

As used in this Section, the term “beneficial owner” means a natural person or persons who ultimately owns or controls a share membership interest, respectfully, or who exercises ultimate effective control over a legal person or arrangement affecting shares or membership interests;”

Section 1601(f) states:

A Palau corporation shall maintain information related to any beneficial ownership of its shares or membership interests, respectfully, and make that information accessible to the Registrar upon request free of charge and without the need for a court order.

Note that these AML provisions in the law will help address the issue of “front” companies, which are reported to be widespread in Palau. A front company is one that is nominally owned and operated by local Palauan citizens listed as shareholders and directors, but that, in reality, are owned and operated by persons—usually non-citizens—that don’t appear in the official documents. While these fronts might not be aimed at money-laundering, they may be used to avoid local taxation or local liability for the beneficial owner. Under the provisions from the law cited above, combined with provisions in the law that makes submission of false documents to the Registrar a crime, the law will have enforcement provisions that can allow fronts to be discovered upon investigation by the Registrar and participants in the scheme prosecuted.

2.7 Foreign corporations. The Act contains more robust provisions for foreign corporations that seek to do business in Palau. The Act would in no way replace the requirements set out in the Foreign Investment Act. Instead, the Act focuses on the actions of the foreign corporation once it has received FIB approval. The Act also covers foreign nonprofit corporations that wish to operate in Palau.

3.0 Re-registration

There is no electronic database for Palau corporations created under the old law that contains all the required information that will be posted to the new online register under the Act. Thus, there must be a way to transition from the old paper-based register established under the older law into the new electronic system.

Other Pacific nations have faced the same question when they passed their own comprehensive corporate reforms. The first to address this situation was New Zealand in 1993, and it required

all companies to re-register as a corporation under the new Act. The Solomon Islands, Cook Islands, Papua New Guinea and most recently Tonga all followed the same approach.

The Act also follows this approach and requires all corporations to re-register within one-year from commencement of the Act. The re-registration form will contain the same data elements as would be required for a new corporation to be formed under the new law. In this way, all existing companies will provide information into the registry that is up-to-date and is in sync with the new law and new registry. Corporations that fail to re-register will be administratively dissolved. This process also has the positive effect of aging-off the registry companies that are no longer active. A corporation that is administratively dissolved for the failure to re-register may still come back into compliance via the normal procedures for reinstatement set out elsewhere in the Act.

This is an extremely important component of the overall reform. Without good data to migrate to the new online registry, it is certain that incorrect information would be published on the web unless a re-registration process occurs.